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MORRIS PETERSON
Robert McCoy, Bar No. 9121
Email: rrm@morrislawgroup.com
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101
Telephone: (702) 474-9400
Facsimile: (702) 474-9422

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E. Peterson
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Attorneys for Defendant
Community Bank of Nevada, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY B. GUINN, individually and as
Trustee of THE DEL MAR TRUST, et al.,

Plaintiffs,

v.

COMMUNITY BANK OF NEVADA,
INC., a Nevada Corporation; DOE
INDIVIDUALS I-XX; ROE
CORPORATIONS I-XX,

Defendants.

Case No: A587319

Dept No: XIII

MOTION TO DISMISS

09A587319
116526



Defendant Community Bank of Nevada, Inc. ("Community Bank")
moves the Court to dismiss plaintiffs' Complaint for failure to state a claim. This
motion is based on Nev. R. Civ. P. 12(b)(5), Nevada's statute of frauds as codified
in NRS 111.220, and the following points and authorities.

MORRIS PETERSON

By

Robert McCoy
Robert McCoy, No. 9121
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Community Bank of Nevada, Inc.

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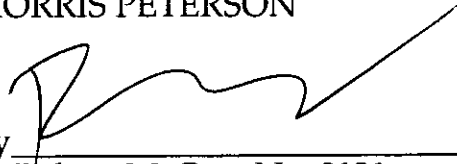
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NOTICE OF MOTION

TO: PLAINTIFFS AND THEIR COUNSEL OF RECORD

PLEASE TAKE NOTICE that the undersigned will bring the foregoing motion to dismiss for hearing before the above-entitled Court at 9 a.m. on June 23, 2009 or as soon thereafter as counsel may be heard.

MORRIS PETERSON

By 

Robert McCoy, No. 9121
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Defendant
Community Bank of Nevada, Inc.

POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs have defaulted on some \$32,085,000 in loans from Community Bank. They brought this meritless action to stall foreclosure on the collateral securing the defaulted loans and to strong arm Community Bank into renegotiating the terms of those loans and nearly \$7,828,000 in other Community Bank loans that are not in default. The gravamen of plaintiffs' Complaint are allegations that Community Bank refused to honor alleged oral promises to either lend plaintiffs additional money or extend the terms of plaintiffs' existing loans. Based on this, plaintiffs allege an entitlement to contract and tort damages under 23 different causes of action.¹ Plaintiffs also seek rescission of

¹ The 23 causes of action are misnumbered such that there are three causes of action labeled "Eleventh Cause of Action," two causes of action labeled "Thirteenth Cause of Action," and two causes of action labeled "Fourteenth Cause of Action." In this motion, Community Bank will differentiate among causes of action that mistakenly bear the same label by referring to them as, for example, the "second Eleventh Cause of Action" and the "third Eleventh Cause of Action."

1 some of these loans (although it is obvious from the Complaint that plaintiffs do
2 not understand the nature of this remedy).

3 This motion seeks to dismiss each of plaintiffs' causes of action
4 because none states a valid legal claim under Nevada law. Plaintiffs cannot, as a
5 matter of law, allege facts sufficient to fulfill one or more essential elements of
6 these claims. Amendment will not solve these defects. For these reasons, as
7 explained in detail below, the Complaint fails to state any claim upon which
8 relief can be granted. It should be dismissed pursuant to Nev. R. Civ. P. 12(b)(5).

9 **II. SUMMARY OF LOANS AT ISSUE**

10 The allegations in the Complaint pertain to seven different loan
11 agreements between Community Bank and plaintiff Jeffrey Guinn or various
12 entities affiliated with Mr. Guinn. Five of these loans are still outstanding:

- 13 A. **Coronado Canyons LLC Loan ("Coronado Canyons Loan")** – a
14 \$29,020,000 loan from Community Bank to plaintiff Coronado
15 Canyons LLC for the development of the Coronado Canyons mixed-
16 use project, secured by a Deed of Trust on the project and its
17 property and guaranteed by various individuals, entities, and trusts,
18 all of whom are plaintiffs. Compl., ¶¶ 26, 28-34. This loan is past
19 due and is in default.
- 20 B. **Coronado Nevada LLC Loan ("Coronado Nevada Loan")** – a
21 \$5,680,000 loan from Community Bank to plaintiff Coronado
22 Nevada LLC, of which Jeffrey Guinn is the managing member. This
23 loan is secured by Mr. Guinn's private jet, a 1984 Bombardier
24 Challenger 601-1A, and guaranteed by plaintiffs Jeffrey and Monica
25 Guinn, one of their trusts, and another entity of which Jeffrey Guinn
26 is the manager. Compl., ¶¶ 101-108. This loan is past due since
27 January 13, 2009 and is in default.
- 28 C. **Coronado Aspen II, LLC Loan ("Coronado Aspen II Loan")** – a
\$4,720,000 loan from Community Bank to nonparty Coronado

1 Aspen II, LLC, of which Jeffrey Guinn is the managing member.
2 This loan is secured by a Deed of Trust on the property that houses
3 plaintiff Aspen Financial LLC's headquarters and guaranteed by
4 various individuals – including plaintiffs Jeffrey and Monica Guinn,
5 Kenny Guinn, and nonparties Mark and Michele Brown – and two
6 trusts affiliated with Jeffrey Guinn. Compl., ¶¶ 109-112.

- 7 D. Jeffrey and Monica Guinn Loan ("Guinn Loan") – a \$3,538,184.49
8 loan from Community Bank to Jeffrey and Monica Guinn. This loan
9 is secured by a Deed of Trust on the Guinn's beachfront residence in
10 Del Mar, California. Compl., ¶ 91.
- 11 E. Jeffrey Guinn's Personal Line of Credit ("Guinn LOC") – a
12 \$600,000 unsecured line of credit to Jeffrey Guinn that was paid off
13 on December 29, 2008 by the Guinn Loan. Compl., ¶¶ 57-58, 91.
- 14 F. Aspen Financial's Personal Line of Credit ("Aspen LOC") – a
15 \$3,000,000 unsecured line of credit to plaintiff Aspen Financial
16 Services, LLC that was paid off on December 29, 2008 by the Guinn
17 Loan. Compl., ¶¶ 56, 86.
- 18 G. Joint Line of Credit ("Joint LOC") - a \$500,000 unsecured line of
19 credit to plaintiffs Jeffrey Guinn, Sean Corrigan, and Kent Barr.
20 Compl., ¶¶ 95-100. This loan is guaranteed by trusts affiliated with
21 these three individuals and is past due and is in default for failure to
22 pay the loan by its maturity date.

23 In addition, plaintiffs allege that Community Bank agreed to lend
24 plaintiffs an additional \$2,800,000 to fund tenant improvements at the Coronado
25 Canyons project ("Tenant Improvements Loan"). This alleged loan agreement is
26 not in writing; the complaint alleges the "agreement" was made orally. Compl.,
27 ¶ 22.

28

1 **III. ARGUMENT**

2 **A. Plaintiffs' Complaint Fails to State Any Valid Claims for Relief**
3 **Against Community Bank.**

4 Plaintiffs' claims against Community Bank should be dismissed for
5 failure to state a claim because "it appears beyond a reasonable doubt that
6 [plaintiffs] could prove no set of facts, which, if true, would entitle [them] to
7 relief." *Schneider v. County of Elko*, 119 Nev. 381, 383, 75 P.3d 368, 369 (2003).
8 Even though it remains the general rule that allegations are accepted as true on a
9 motion to dismiss, *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. Ad. Op. 21
10 at 4-5, 2008 WL 1747877 (Nev. Apr. 17, 2008), plaintiffs' complaint must set forth
11 factual allegations sufficient to establish each element necessary to recover under
12 some actionable legal theory to survive a motion to dismiss. *Hampe v. Foote*, 118
13 Nev. 405, 408, 47 P.3d 438, 439 (2002) (although all factual allegations in the
14 complaint are regarded as true for the purposes of a motion to dismiss,
15 "[d]ismissal is proper where the allegations are insufficient to establish the
16 elements of a claim for relief"); see also *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22,
17 62 P.3d 720, 734 (2003) (motion to dismiss must be granted if the plaintiffs can
18 prove no set of facts that would entitle them to relief) (citing *Edgar v. Wagner*, 101
19 Nev. 226, 228, 699 P.2d 110, 112 (1985)). Plaintiffs cannot do this, as outlined
20 below.²

21 **1. The Statute of Frauds Precludes Plaintiffs' Causes of Action**
22 **Relating to the Tenant Improvements Loan.**

23 For the alleged Tenant Improvements Loan to be enforceable,
24 plaintiffs must allege the existence of a valid loan agreement between them and

25 ² In determining whether to dismiss a complaint, the Court may consider
26 the entirety of any documents referenced in the complaint. See *Arnell v.*
27 *Mayflower Transit, Inc.*, 968 F. Supp. 521, 522 (D. Nev. 1997) ("Documents whose
28 contents are alleged in a complaint and whose authenticity no party questions,
but which are not physically attached to the pleading, may be considered in
ruling on a Rule 12(b)(6) motion to dismiss."). Thus, the Court can properly
consider each of the loan documents that are referenced in plaintiffs' complaint
and attached to this motion without converting this to a motion for summary
judgment.

1 Community Bank. The statute of frauds requires such an agreement be in
2 writing because it is an agreement for a loan in excess of \$100,000. NRS
3 111.220(4).³ Plaintiffs allege, and thus admit, that this alleged loan was based on
4 an *oral* agreement. Compl. ¶ 22 ("Mr. Frank then *stated* that the Bank would loan
5 \$2,800,000 to Coronado Canyons to fund the tenant improvements when the
6 Project was approximately fifty to sixty percent (50-60%) completed."). They do
7 not allege, because they cannot, the existence of a written contract that survives
8 the statute of frauds. In fact, the Complaint makes no mention of any "writing"
9 evidencing this loan at all, since none exists.

10 Because plaintiffs base their claims relating to the Tenant
11 Improvements Loan on nothing more than alleged oral representations by
12 Community Bank, NRS 111.220(4) renders this alleged commitment void. Thus,
13 plaintiffs' claims for breach of contract as to the Tenant Improvements Loan
14 (Third Cause of Action) and breach of the implied covenant of good faith and
15 fair dealing as to the Tenant Improvements Loan and the guarantees thereto
16 (Second and Fourth Causes of Action) should be dismissed.

17 Plaintiffs' claim for intentional interference with prospective
18 economic advantage (the third Eleventh Cause of Action) should be dismissed
19 for the same reasons. This claim is premised upon Community Bank's alleged
20 "refusal to honor its obligation to fund the tenant improvements," which, in
21 plaintiffs' eyes, prevented plaintiff Coronado Canyons "from entering into leases
22

23 ³ NRS 111.220 provides, in relevant part:

24 In the following cases every agreement is void, unless
25 the agreement, or some note or memorandum thereof
26 expressing the consideration, is in writing, and
27 subscribed by the person charged therewith:

28 ...

(4) Every promise or commitment to loan money or to
grant or extend credit in an original principal amount
of at least \$100,000 made by a person engaged in the
business of lending money or extending credit.

1 with the prospective tenants." Compl., ¶ 216. Because the statute of frauds
2 prevents plaintiffs from enforcing any such "obligation" as a matter of law, this
3 claim likewise fails and should be dismissed.

4 **2. Plaintiffs' Promissory Estoppel Claims Are Invalid and Do**
5 **Not Save the Complaint from Dismissal Under the Statute of**
6 **Frauds.**

7 Absent proof of fraud, Nevada's statute of frauds acts as an
8 impenetrable bar to the enforcement of the Tenant Improvements Loan.
9 Therefore, in the absence of such proof, plaintiffs' promissory estoppel claims
10 must be dismissed. *Edwards Industries, Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025,
11 1033-34, 923 P.2d 569, 574-75 (1996) ("A promise to execute a written agreement,
12 *without proof of fraud*, is insufficient to invoke estoppel against the use of the
13 statute of frauds as a defense."); *Harmon v. Tanner Motor Tours of Nev., Ltd.*, 79
14 Nev. 4, 16, 377 P.2d 622, 628-29 (1963) ("We acknowledge the general rule that, *in*
15 *the absence of fraud*, a promise to reduce an agreement to writing is not, standing
16 alone, a basis for invoking an estoppel against raising the statute of frauds in
17 defense.") (emphasis added to both).

18 Thus, although contracts that are unenforceable under the statutes of
19 frauds may sometimes be enforced under the estoppel doctrine,⁴ that doctrine
20 does not rescue the Tenant Improvements Loan from the statute of frauds
21 because there is no such fraud here *as a matter of law*. Community Bank's refusal
22 to perform the alleged parol agreement to fund the Tenant Improvements Loans,
23 the act on which the promissory estoppel claims are based (Compl., ¶¶ 150-151,
24 159-160), does not rise to the level of fraud. *Moore v. De Bernardi*, 47 Nev. 33, 213
25 P. 1041, 1044 (1923) ("The mere refusal to perform a parol agreement, void under
26 the statute of frauds, may be a moral wrong, but it is in no sense a fraud in law or
27 in equity.") (quoting *Wheeler v. Reynolds*, 21 Sickels 227, 66 N.Y. 227, 1876 WL

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⁴ *Alpark Distributing, Inc. v. Poole*, 95 Nev. 605, 607-608, 600 P.2d 229, 230 -
231 (1979) ("[C]ontracts otherwise unenforceable because of the statute of frauds
may be enforced under the doctrine of estoppel.").

1 12220, *1 (N.Y. 1876)); *Price v. Highland Community Bank*, 722 F. Supp. 454, 459
2 (N.D. Ill. 1989) ("A change of mind can be a breach of contract. . . but it is not
3 fraud."). Plaintiffs' promissory estoppel claims as to the Coronado Canyons Loan
4 and the Guarantees thereto (Fifth and Sixth Causes of Action) thus fail as a
5 matter of law and should be dismissed.

6 Plaintiffs' promissory estoppel claims also fail for a separate,
7 independent reason. An essential element of any promissory estoppel claim is
8 *reasonable* reliance by the party claiming estoppel (plaintiffs here) on the
9 statements allegedly made by the party to be estopped (Community Bank). *See*
10 *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 352, 934 P.2d 257, 261 (1997)
11 ("reasonable reliance is a necessary element" of an estoppel claim).

12 Plaintiffs cannot satisfy the reasonable reliance element here because
13 the alleged oral promises on which plaintiffs base their claims are *precluded* by the
14 merger and integration clause contained in the Coronado Canyons Loan
15 Agreement. Section 11(d) of that agreement states that:

16 This Agreement constitutes the entire agreement of the
17 parties hereto with respect to the subject matter hereof
18 and supercedes all prior negotiations, understandings
and agreements between the parties hereto.

19 Ex. A, Coronado Canyons Loan Agreement.

20 Plaintiffs agreed to this merger and integration clause when they
21 signed the loan agreement and guarantees thereto. Plaintiffs cannot, therefore,
22 be viewed to have "reasonably relied" on extra-contractual statements as a matter
23 of law. *See M.H. Segan L.P. v. Hasbro, Inc.*, 924 F. Supp. 512, 527 (S.D.N.Y. 1996)
24 ("Reasonable reliance is precluded when an express provision in a written
25 contract contradicts a prior alleged representation in a meaningful fashion.");
26 *W.R. Grace & Co. v. Taco Tico Acquisition Corp.*, , 454 S.E.2d 789, 791 (Ga. Ct. App.
27 1995) ("This court has consistently held that disclaimers in contracts prevent
28 justifiable reliance on other representations purportedly made by the parties. . .
."); *Mims v. Cagle Foods JV, LLC*, 148 Fed.Appx. 762, 770, 2005 WL 1400259, *5

1 (11th Cir. 2005) (plaintiffs cannot maintain a claim of promissory estoppel based
2 on pre-contractual promises where a merger or integration clause in the contract
3 expressly cancels those promises; finding reliance on those promises
4 unreasonable); *Tampa Bay Fin., Inc. v. Nordeen*, 612 S.E.2d 856, 859-60 (Ga. Ct.
5 App. 2005) ("[A]ny promises made before the signing of the agreement cannot be
6 used to vary the terms of a valid written agreement purporting to contain the
7 entire agreement of the parties, nor would the violation of any such alleged oral
8 agreement amount to actionable fraud.") (internal citations omitted); *Fontbank,*
9 *Inc. v. CompuServe, Inc.*, 742 N.E.2d 674, 679 (Ohio Ct. App. 2000) (no promissory
10 estoppel claim where an integration clause precluded prior communications on
11 which contract and estoppel claims were based); *Gowni v. BP Corp. N. Am., Inc.*,
12 2003 WL 24051561, **7-8 (M.D. Fla. 2003) (reliance on oral representations not
13 reasonable where subsequent and contemporaneous written agreements
14 contradicted representations and contained merger clauses).

15 Plaintiffs have agreed that the Coronado Canyons Loan Agreement
16 constitutes their "entire agreement" with Community Bank. They cannot,
17 therefore, reasonably rely on alleged oral promises made before the execution of
18 the loan agreement to support promissory estoppel claims. *Great Am. Ins. Co.,*
19 *Inc.*, 113 Nev. at 352, 934 P.2d at 261 ("the party who claims reliance must not
20 have closed his eyes to warnings or inconsistent circumstances."). The fact that
21 plaintiffs agreed to the Coronado Canyons Loan Agreement on November 1,
22 2007 (*see* Exhibit A) *after* these alleged oral promises were made in October 2007
23 (Compl., ¶ 22) provides even more support for application of this doctrine. *See*
24 *Gowni*, 2003 WL 24051561, * 8 ("The fact that the alleged oral promises were made
25 both prior and subsequent to the drafting and execution of the [contract
26 containing the merger clause] makes reliance all the more unreasonable because
27 the Plaintiffs were aware that the [contract containing the merger clause]
28 contradicted the oral promises, yet went forward with the agreement.").

1 **3. All of Plaintiffs' Claims Relating to the Aspen LOC and the**
2 **Guinn LOC Are Invalid Because Those Loans Have Been**
3 **Paid.**

4 Plaintiffs have asserted several causes of action for damages relating
5 to the Aspen LOC and the Guinn LOC. There is no dispute that these loans were
6 funded and were later fully repaid. Compl., ¶¶ 86 (Aspen LOC paid off), 91
7 (Guinn LOC paid off). Plaintiffs' claims as to these two loans must therefore be
8 dismissed.

9 The full performance of these loan agreements by both parties
10 precludes any action for damages on these loans. 17B C.J.S. *Contracts* § 433 (1999)
11 ("Generally, where a contract has been performed by both parties, it terminates
12 and may not be made the basis of an action for breach."); *Morgan Drive Away, Inc.*
13 *v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen and Helpers of Am.*, 166 F. Supp.
14 885, 890 (D.C. Ind. 1958) (contract that has been fully performed by both parties
15 cannot be the basis of an action for damages). *See also* Restatement (Second) of
16 Contracts § 235(1) ("Full performance of a duty under a contract discharges the
17 duty.").

18 Thus, all of plaintiffs' claims relating to the Aspen LOC should be
19 dismissed: fraudulent misrepresentation (Thirteenth Cause of Action) and
20 promissory estoppel (the second Fourteenth Cause of Action). Likewise, the
21 following claims relating to the Guinn LOC should be dismissed: fraudulent
22 misrepresentation (Fourteenth Cause of Action) and promissory estoppel
23 (Fifteenth Cause of Action).

24 **4. Plaintiffs' Other Three Promissory Estoppel Claims Are Also**
25 **Invalid as a Matter of Law.**

26 Plaintiffs cannot state valid claims for promissory estoppel on the
27 Aspen LOC (the second Fourteenth Cause of Action), the Guinn LOC (Fifteenth
28 Cause of Action), as well as the Joint LOC (Sixteenth Cause of Action) because
each of these loans is the subject of a written contract. Compl., ¶¶ 56, 57, 95
(alleging the existence of express loan agreements for each loan). Promissory

1 estoppel claims cannot be asserted where a written agreement is in place. See
2 *Gadsby v. Norwalk Furniture Corp.*, 71 F.3d 1324, 1333 (7th Cir. 1995) ("the general
3 rule" is that "promissory estoppel is unavailable where an express contract
4 exists"); *All-Tech Telecom, Inc. v. Amway Corp.*, 174 F.3d 862, 869 (7th Cir. 1999)
5 ("When there is an express contract governing the relationship out of which the
6 promise emerged, and no issue of consideration, there is no gap in the remedial
7 system for promissory estoppel to fill."); *Am. Casual Dining, L.P. v. Moe's*
8 *Southwest Grill, L.L.C.*, 426 F. Supp. 2d 1356, 1371 (N.D. Ga. 2006) (promissory
9 estoppel is not available as a remedy where there is an express contract); *Foxley v.*
10 *Sotheby's Inc.*, 893 F. Supp. 1224, 1234 (S.D.N.Y. 1995) (promissory estoppel claim
11 dismissed because express contract was in place).

12 **5. Plaintiffs Cannot State a Claim for Breach of the Coronado**
13 **Canyons Loan Agreement.**

14 Plaintiffs' also cannot state a valid claim for breach of the Coronado
15 Canyons Loan (First Cause of Action) on the basis that Community Bank has not
16 advanced funds under that contract. To sustain this claim for breach of contract,
17 plaintiffs must allege: (1) a valid and existing contract was entered into between
18 plaintiffs and Community Bank; (2) *plaintiffs performed or were excused from*
19 *performance*; (3) Community Bank breached; and (4) plaintiffs sustained damages
20 as a result of the breach. *Reichert v. Gen. Ins. Co. Of Amer.*, 442 P.2d 377, 381 (Cal.
21 1968).

22 Plaintiffs' claim for breach here fails because plaintiffs *have not*
23 *performed* their obligations under this loan agreement by paying off the loan by its
24 May 1, 2009 maturity date. Ex. A, Coronado Canyons Loan Agreement, § 4.7(b)
25 ("Borrower shall pay the outstanding principal amount of Loan in accordance
26 with the Note."); Ex. B, Coronado Canyons Promissory Note, ¶ 2 (maturity date
27 of note is May 1, 2009). Prior to this date, the loan was also in default under
28 Section 9(o) of the Loan Agreement. Ex. C, March 30, 2009 Default Notice

1 (referred to in Paragraph 113 of the Complaint). Plaintiffs' failure of performance
2 precludes their action against Community Bank for breach. *Reichert, supra*.

3 **6. Plaintiffs Cannot State a Valid Claim for Fraudulent**
4 **Misrepresentation and Negligent Misrepresentation.**

5 Plaintiffs have also asserted claims for fraudulent misrepresentation
6 as to the Coronado Canyons Loan and Guarantees thereto (Seventh and Eighth
7 Causes of Action), the Aspen LOC (first Thirteenth Cause of Action), and the
8 Guinn LOC (first Fourteenth Cause of Action), and negligent misrepresentation
9 as to the Coronado Canyons Loan and Guarantees thereto (Ninth and Tenth
10 Causes of Action). The so-called "misrepresentation" on which the Coronado
11 Canyons claims are based is the alleged promise to provide funding for tenant
12 improvements. Compl., ¶¶ 167, 175. The "misrepresentation" on which the
13 Aspen LOC and Guinn LOC claims are based is the alleged promise to provide
14 extensions to each of those loans. Compl., ¶¶ 229, 236.

15 To survive, these claims require plaintiffs to have justifiably relied
16 on these alleged representations. *See Blanchard v. Blanchard*, 108 Nev. 908, 911,
17 839 P.2d 1320, 1322 (1992) (fraudulent misrepresentation claim requires that "that
18 the defendant made a false representation. . . with knowledge or belief that the
19 representation was false or without a sufficient basis for making the
20 representation. Further, plaintiffs must establish that the defendant intended to
21 induce the plaintiff to act or refrain from acting on the representation, and that
22 the plaintiff *justifiably relied* on the representation.") (emphasis added).

23 But plaintiffs' reliance on the alleged oral promises is not justifiable,
24 as a matter of law, for the reasons set forth in Section III.A.2 above. The merger
25 and integration clause in the Coronado Canyon's Loan Agreement (Exhibit A)
26 precludes plaintiffs from justifiably relying on the alleged representations as to
27 additional funding for tenant improvements. *See M.H. Segan L.P., supra*, *W.R.*
28 *Grace & Co., supra*. Similar provisions in the loan agreements for the Aspen LOC
and the Guinn LOC preclude plaintiffs from proving the justifiable reliance

1 element as to these two loans. Ex. D, Business Loan Agreement (Aspen LOC) at 4
2 ("This Agreement, together with any Related Documents, constitutes the
3 understanding and agreement of the parties as to the matters set forth in this
4 Agreement. No alteration of or amendment to this Agreement shall be effective
5 unless given in writing and signed by the party or parties sought to be charged or
6 bound by the alternation or amendment."). Ex. E, Business Loan Agreement
7 (Guinn LOC) at 4 (same). These fraudulent misrepresentation claims should
8 therefore be dismissed.

9 For the same reasons, plaintiffs cannot state a valid negligent
10 misrepresentation claim as to the Coronado Canyons Loan and Guarantees
11 thereto (Ninth and Tenth Causes of Action). Reasonable reliance is also an
12 essential element of this claim. *See Bill Stremmel Motors, Inc. v. First Nat'l Bank of*
13 *Nevada*, 94 Nev. 131, 134, 575 P.2d 938, 940 (1978) (adopting the Restatement
14 (Second) of Torts § 552 definition of the tort of negligent misrepresentation,
15 which requires "justifiable reliance" upon the supposedly false information).⁵
16 Because there can be no such reasonable reliance by plaintiffs, as stated above,
17 these claims must be dismissed.

18 **7. Plaintiffs Cannot State a Valid Claim for Breach of the**
19 **Implied Covenant of Good Faith and Fair Dealing.**

20 Plaintiffs claims for breach of the implied covenant of good faith and
21 fair dealing as to the Coronado Aspen II Loan, the Coronado Nevada Loan, the
22 Joint LOC, and the Guinn Loan (Seventeenth Cause of Action) should also be
23 dismissed. These claims are premised on plaintiffs' allegation that Community

24 ⁵ Restatement (Second) of Torts § 552:

25 One who, in the course of his business, profession or
26 employment, or in any other action in which he has a
27 pecuniary interest, supplies false information for the
28 guidance of others in their business transactions, is
subject to liability for pecuniary loss caused to them by
their *justifiable reliance* upon the information, if he fails
to exercise reasonable care or competence in obtaining
or communicating the information.

1 Bank used these loans as "leverage" in its negotiation with plaintiffs as to the
2 Coronado Canyons Loan, including an alleged refusal to renegotiate the terms of
3 some of these loans. Compl., ¶¶ 106-107, 111-122, 272.

4 Plaintiffs have no possible legal claim under this theory because
5 plaintiffs have not alleged that Community Bank deprived them of the right to
6 receive the fruits of their contracts. In fact, plaintiffs allege the opposite – that the
7 loans were in fact funded. Compl., ¶¶ 91, 101, 109. Community Bank's refusal to
8 renegotiate these loans cannot breach the common law duty of good faith and
9 fair dealing. As one court pointed out:

10 [t]he covenant may not. . . be invoked to create rights
11 and duties not otherwise provided for in the existing
12 contractual relationship. . . . The scope of the covenant is
13 only as broad as the contract that governs the particular
14 relationship.

15 *In re Laudani*, 401 B.R. 9, 38 (Bkrtcy. D. Mass. 2009) (internal citations omitted).

16 The loan agreements imposed no duty on Community Bank to renegotiate these
17 loans with plaintiffs. Plaintiffs therefore cannot state a valid claim for relief
18 under this theory and this cause of action should be dismissed.

19 **8. Plaintiffs Cannot State a Claim for Breach of Fiduciary Duty**
20 **Because No Fiduciary Relationship Exists Between a Lender**
21 **and Borrower.**

22 Plaintiffs cannot succeed on their claims for breach of fiduciary duty
23 as to the Guinn LOC, the Aspen LOC, the Tenant Improvements Loan, the
24 Coronado Aspen II Loan, and the Coronado Nevada Loan (Twelfth Cause of
25 Action) because Community Bank owed no such duty to plaintiffs. For a
26 fiduciary duty to exist, a special relationship must exist between two parties. *Ins.*
27 *Co. of the W. v. Gibson Tile Co., Inc.*, 122 Nev. 455, 134 P.3d 698, 702 (2006). The
28 creditor/debtor relationship between Community Bank and plaintiffs is not one
that gives rise to fiduciary obligations. *See Temp-Way Corp. v. Cont'l Bank*, 139
B.R. 299, 318 (Bkrtcy. E.D. Pa. 1992) ("a lender is not a fiduciary of the borrower");
In re W.T. Grant Co., 699 F.2d 599, 609-10 (2d Cir. 1983) ("a creditor is under no

1 fiduciary obligation to its debtor") (internal citations omitted); *Lawrence v. Bank of*
2 *Am.*, 163 Cal. App. 3d 431, 437 (1985) (debtor-creditor relationship is not a
3 fiduciary one).

4 Because no fiduciary relationship exists between Community Bank
5 and plaintiffs, plaintiffs cannot establish an essential element of their fiduciary
6 duty claims. See *Mosier v. S. Cal. Physicians Ins. Exch.*, 63 Cal. App. 4th 1022, 1044,
7 74 Cal. Rptr. 2d 550, 565 (Cal. App. Ct. 1998) ("The elements of a cause of action
8 for breach of fiduciary duty are: (1) the existence of a fiduciary duty; (2) the
9 breach of that duty; and (3) damage proximately caused by that breach."). Those
10 claims should therefore be dismissed.⁶

11 **9. Plaintiffs Cannot State a Claim for Tortious Breach of The**
12 **Implied Covenants of Good Faith and Fair Dealing.**

13 Because there is, as a matter of law, no fiduciary duty between
14 Community Bank and plaintiffs, plaintiffs cannot state a claim for tortious
15 breach of the implied covenant of good faith and fair dealing (Eighteenth Cause
16 of Action). The tort action for breach of the implied covenant of good faith and
17 fair dealing requires a special element of reliance or fiduciary duty, and is
18 limited to rare and exceptional cases. *Great Am. Ins. Co.*, 113 Nev. at 354-55, 934
19 P.2d at 263 (citing *A.C. Shaw Construction v. Washoe County*, 105 Nev. 913, 915, 784
20 P.2d 9, 10 (1989) and *K Mart Corp. v. Ponsock*, 103 Nev. 39, 49, 732 P.2d 1364, 1370
21 (1987)).

22 Such a tort claim is limited to cases involving "special relationships"
23 characterized by a profound inequality in bargaining positions, which is not
24 present here, since plaintiffs are obviously sophisticated businesspeople. *Great*
25 *Am. Ins. Co.*, 113 Nev. at 354-55, 934 P.2d at 263 (no "tort liability in certain
26 relationships where agreements have been heavily negotiated and the aggrieved

27
28 ⁶ This claim should also be dismissed as to the Guinn LOC and the Aspen
LOC for the reasons stated in Section III.A.3, above. It should also be dismissed
as to the Tenant Improvements Loan under the statute of frauds, as discussed in
Section III.A.1, above.

1 party was a sophisticated businessman"). This claim should therefore also be
2 dismissed.

3 **10. Rescission is Not a Cause of Action Under Which Plaintiffs**
4 **Can Seek Relief.**

5 Plaintiffs also assert three causes of action for "rescission" of the
6 Coronado Canyons Loan (Eleventh Cause of Action), the Guarantees to that loan
7 (the second Eleventh Cause of Action), and the Guinn Loan (Thirteenth Cause of
8 Action⁷). Rescission is not a valid cause of action; it is a legal remedy for mutual
9 mistake or some limited breaches of contract. *Bergstrom v. Estate of DeVoe*, 109
10 Nev. 575, 577, 854 P.2d 860, 861 (1993) ("[r]escission is an equitable *remedy*");
11 *Great Am. Ins. Co.*, 113 Nev. at 354, 934 P.2d at 262 ("[r]escission is a remedy");
12 Black's Law Dictionary 1332 (8th ed. 2004) ("Rescission is generally available as a
13 remedy or defense. . .").

14 This remedy is not even available to plaintiffs here for the Coronado
15 Canyons Loan and the Guarantees thereto, since that loan is in default for
16 nonpayment, as set forth above. *See Canepa v. Durham*, 62 Nev. 417, 426-427, 153
17 P.2d 899, 903 (1944) ("The law is not such as will permit respondents to sit idly by
18 and invoke a rescission of a contract because of a breach of the provisions
19 thereof, unless they perform that which is required of them."); *see also* Ex. A,
20 Coronado Canyons Loan Agreement, § 4.7(b); Ex. B, Coronado Canyons
21 Promissory Note, ¶ 2.

22 That being said, Community Bank will gladly agree with plaintiffs to
23 rescind these various loan agreements. *See Holland v. Crummer Corp.*, 78 Nev. 1, 7,
24 368 P.2d 63, 66 (1962) ("Parties to an existing contract may subsequently enter
25 into a valid agreement to extinguish, rescind, or modify the former contract. For
26 the subsequent agreement to constitute a rescission, it must be made with the
27 mutual consent of the parties."). But rescission requires that plaintiffs

28
⁷ The cause of action for rescission of Guinn Loan is, like the cause of
action for fraudulent misrepresentation, labeled "Thirteenth Cause of Action."

1 immediately *return* all of the loan proceeds such that both plaintiffs and
2 Community Bank are restored for the positions they occupied prior to entering
3 into the various loan agreement at issue in this case:

4 Rescission is an equitable remedy which totally
5 abrogates a contract and which seeks to place the parties
6 in the position they occupied prior to executing the
7 contract. The purpose of this is to prevent harm to the
8 defendant; the defendant should not by rescission
sacrifice the benefits of the agreement and at the same
time not be restored the benefits he previously
conferred upon the plaintiff.

9 *Bergstrom*, 109 Nev. at 577, 854 P.2d at 861 (internal citations omitted); *accord*
10 *Great Am. Ins. Co.*, 113 Nev. at 354, 934 P.2d at 262 (rescission "allows an
11 aggrieved party to a contract to abrogate totally, or cancel, the contract, with the
12 final result that the parties are returned to the position they occupied prior to
13 formation of the contract").

14 Rescission would also preclude the remainder of plaintiffs' causes of
15 action on these loans and plaintiffs would have no remaining claims for damages.
16 *See Bergstrom*, 109 Nev. at 578, 854 P.2d at 862 (1993) ("Adhering to the general
17 canons of rescission set forth above, we conclude that it would have been proper
18 to rescind the contract or to award damages for breach of that contract. It was,
19 however, improper to both rescind the contract and to award damages for
20 breach."). As Professor Corbin explained,

21 When a contract has been partially performed, and one
22 of the parties to it makes default, the other has a choice
23 of remedies. He may and he must rescind or affirm the
24 contract, but he cannot do both. If he would rescind it,
25 he must immediately return whatever of value he has
26 received under it, and then he may defend against an
action for specific performance. . . and he may recover
back whatever he has paid. . . . He cannot at the same
time affirm the contract by retaining its benefits and
rescind it by repudiating its burdens.

27 5 Arthur Linton Corbin, *Corbin on Contracts* § 1114 (1964) (emphasis in original;
28 internal citations omitted) (quoted in *Bergstrom, supra*).

1 **11. Plaintiffs Claim for Punitive Damages Must Be Dismissed.**

2 The Complaint also alleges punitive damages against Community
3 Bank, although it is not entirely clear on what conduct plaintiffs base these
4 allegations. Compl. ¶¶ 281-82. Of course, it is both black letter contract law and
5 statutory law in Nevada that punitive damages are not available in contract
6 actions. NRS 42.005 (limiting punitive damage awards to actions "not arising
7 from contract"); *see also Sprouse v. Wentz*, 105 Nev. 597, 781 P.2d 1136 (1989)
8 (punitive damages award stricken when plaintiff never pleaded a claim
9 sounding in tort).

10 Because punitive damages are not available in contract actions, the
11 only theories in the Complaint under which plaintiffs could state a claim for
12 punitive damages would be for misrepresentation, breach of fiduciary duty, or
13 tortious breach of the implied covenant of good faith and fair dealing. Since
14 these claims are unavailable to plaintiffs as a matter of law for the reasons
15 explained above, there is no tort action for which plaintiffs state a valid claim
16 and plaintiffs claim for punitive damages must be dismissed.

17 **B. Plaintiffs Claims Should Be Dismissed with Prejudice.**

18 Plaintiffs should not be granted leave to amend their complaint to
19 attempt to state a claim against Community Bank because any such amendment
20 would be futile. By their own admission, plaintiffs' claims are based on alleged
21 oral agreements that are not evidenced by any writing or are based on oral
22 representations that are contradicted and rendered ineffective by merger and
23 integration clauses to which plaintiffs agreed. No amount of discovery,
24 amendment, or repleading will change the fact that, under Nevada law, plaintiffs
25 cannot assert valid claims for relief under these claims. Because plaintiffs have
26 no possible legal claim against Community Bank under any set of facts, their
27

28

1 Complaint should be dismissed with prejudice.⁸ See *Nelson v. Sierra Construction*
2 *Corp.*, 77 Nev. 334, 343, 364 P.2d 402, 406 (1961) (where there is no indication that
3 plaintiffs could state a claim by alleging additional facts, court need not allow
4 amendment).

5 **IV. CONCLUSION**

6 For the foregoing reasons, the Court should dismiss plaintiffs'
7 complaint without leave to amend.

8 MORRIS PETERSON

9
10 By 

11 Robert McCoy, No. 9121
12 900 Bank of America Plaza
13 300 South Fourth Street
14 Las Vegas, Nevada 89101

15 Attorneys for Defendant
16 Community Bank of Nevada, Inc.
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25 ⁸ Additional allegations that contradict these documents would not be
26 taken as true and thus would not survive a motion to dismiss. See, e.g., *Sprewell v.*
27 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) ("The court need not,
28 however, accept as true allegations that contradict matters properly subject to
judicial notice or by exhibit.") cited in *Veney v. Wyche*, 293 F.3d 726, 730 (4th Cir.
2002); see also *N. Ind. Gun & Outdoor Shows, Inc. v. City of South Bend*, 163 F.3d 449,
454 (7th Cir. 1998) ("It is a well-settled rule that when a written instrument
contradicts allegations in the complaint to which it is attached, the exhibit trumps
the allegations.").

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of MORRIS PETERSON; that I am familiar with the firm's practice of collection and processing documents for mailing; that, in accordance therewith, I caused the following document to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below: **MOTION TO DISMISS**

Dennis L. Kennedy
Kimberly McGhee
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, NV 89148
(702) 562-8820
(702) 562-8821 Facsimile

Attorneys for Plaintiffs

DATED this 20th day of May, 2009.

By Hatner Sutter

EXHIBIT A

CONSTRUCTION LOAN AGREEMENT

Dated as of November 1, 2007

by and between

COMMUNITY BANK OF NEVADA,

as the lender and

CORONADO CANYONS, LLC, a Nevada limited-liability company,

as the borrower

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CONSTRUCTION LOAN AGREEMENT

This CONSTRUCTION LOAN AGREEMENT ("**Agreement**") is dated and effective as of November 1, 2007, between CORONADO CANYONS, LLC, a Nevada limited-liability company ("**Borrower**") and COMMUNITY BANK OF NEVADA ("**Bank**").

WITNESSETH:

A. Pursuant to the terms of this Agreement, Bank has agreed to lend to Borrower the sum of TWENTY NINE MILLION TWENTY THOUSAND AND NO/100 DOLLARS (\$29,020,000.00), or so much thereof as may be advanced ("**Loan**").

B. The Borrower's obligations to pay the Loan shall be evidenced by a promissory note ("**Note**"), executed by Borrower, payable to the order of Bank, and secured by a Deed of Trust and Security Agreement With Assignment of Rents and Fixture Filing ("**Deed of Trust**") on the real property ("**Property**") described on attached Exhibit "B-1" and Exhibit "B -2", respectively, and the personal property now or in the future located on the Property, all of even date herewith. (The Deed of Trust and all financing statements, this Loan Agreement, any guaranties of payment or completion required by Bank, and any other collateral documents required by Bank in connection with the Loan (defined below) are collectively called the "**Security Documents**").

C. The terms and conditions of the Note and all Security Documents shall be in form and substance satisfactory to Bank.

NOW, THEREFORE, for valuable consideration, Borrower and Bank agree that the following terms and conditions govern the Loan:

1. Definitions. The following definitions shall be used in this Agreement:

"**Account**" shall have the meaning for that term set forth in Section 3 of this Agreement.

"**Advance**" shall have the meaning for that term set forth in Section 3 of this Agreement.

"**Advance Request**" shall have the meaning for that term set forth in Section 4.1 of this Agreement.

"**Agreement**" shall mean this Construction Loan Agreement, by and between the Bank and the Borrower, of even date herewith.

"**Approved Budget**" shall have the meaning for that term set forth in Section 3 of this Agreement.

"Architect" shall have the meaning for that term set forth in Section 2 of this Agreement.

"Bank" shall mean COMMUNITY BANK OF NEVADA.

"Borrower" shall mean CORONADO CANYONS, LLC, a Nevada limited-liability company.

"Completion Date" shall have the meaning for that term set forth in Section 8 of this Agreement.

"Construction Control Agent" shall have the meaning for that term set forth in Section 4.2 of this Agreement.

"Construction Contract" shall have the meaning for that term set forth in Section 2 of this Agreement.

"Contractor" shall have the meaning for that term set forth in Section 2 of this Agreement.

"Debt Service" shall mean, for any given period of time, the principal and interest payments due on obligations secured by the Construction Parcel.

"Debt Service Coverage Ratio" shall mean, for the Construction Parcel, the ratio of Operating Income to Debt Service.

"Deed of Trust" shall have the meaning for that term set forth in Paragraph B of the Recitals of this Agreement.

"Eligible Development Costs" shall have the meaning for that term set forth in Section 4.3 of this Agreement.

"Environmental Laws" means all applicable federal, state and local laws pertaining to air and water quality, hazardous waste, waste disposal, underground storage tanks and other environmental matters, including, but not limited to, the Clean Water, Clean Air, Federal Water Pollution Control, Solid Waste Disposal, Resource Conservation Recovery and Comprehensive Environmental Response, Compensation and Liability Acts, and any applicable laws of the State of Nevada, and the rules, regulations and ordinances of Clark County, the agencies of the government of the State of Nevada, the Environmental Protection Agency, the U.S. Fish and Wildlife Service and all applicable federal, state and local agencies and bureaus.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"Event of Default" shall have the meaning for that term set forth in Section 9 of this Agreement.

"Guarantors" shall have the meaning for that term set forth in Section 5.1 of this Agreement.

"Guaranty" shall have the meaning for that term set forth in Section 5.1 of this Agreement.

"Hazardous Materials" means any substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Nevada, or the United States Government or agency or instrumentality thereof, or which is otherwise regulated or defined as a "hazardous waste", "extremely hazardous waste", or such other similar classification under any Environmental Law.

"Improvements" shall have the meaning for that term set forth in Section 2 of this Agreement.

"Interest Reserve" shall have the meaning for that term set forth in Section 4.7 of this Agreement.

"Loan" shall have the meaning set forth for that term in Paragraph A of the Recitals of this Agreement.

"Loan Proceeds" shall have the meaning for that term set forth in Section 3 of this Agreement.

"Maturity Date" shall have the meaning for that term set forth in Section 4.7 of this Agreement.

"Note" shall have the meaning set forth for that term in Paragraph B of the Recitals of this Agreement.

"Operating Income" shall mean the rental income generated from tenants actually occupying the Construction Parcel, net of operating expenses, taxes, and other expenses typically associated with the leasing and operation of projects such as the Project, and excluding depreciation, amortization, and the application of insurance proceeds.

"Plans and Specifications" shall have the meaning for that term set forth in Section 2 of this Agreement.

"Project" shall have the meaning for that term set forth in Section 2 of this Agreement.

"Property" shall have the meaning set forth for that term in Paragraph B of the Recitals of this Agreement, and shall mean 10.09 acres (as represented by the Borrower) of land located at Green Valley Parkway and Horizon Ridge in Henderson, Nevada (the **"Construction Parcel"**), as well as an additional 2.21 acres (as represented by Borrower) of land adjacent to the Construction Parcel (the **"Tesco Parcel"**). The Construction Parcel is described in Exhibit "B-1" and the Tesco Parcel is described in Exhibit "B-2".

"Security Documents" shall have the meaning set forth for that term in Paragraph B of the Recitals of this Agreement.

"Title Company" shall have the meaning for that term set forth in Section 5.1 of this Agreement.

"Title Policy" shall have the meaning for that term set forth in Section 5.1 of this Agreement.

2. **Description of Construction.** Borrower will use the Loan Proceeds to construct a five buildings (**"Building"**) with a total of 93,000 square feet (more or less, as represented by Borrower to Bank) of space, and to develop the Construction Parcel and to construct certain improvements and associated amenities (collectively, the **"Improvements"**) on the Property and to purchase equipment that will be installed in and used on the Property (the Improvements, the Property, the equipment that will be installed in and used on the Construction Parcel and all other related on-site and off-site work and improvements are collectively the **"Project"**). The Improvements are described in plans and specifications (**"Plans and Specifications"**), described on Exhibit "A", prepared by the architect, if any, identified on Exhibit "A" (**"Architect"**) and will be constructed by the general contractor identified on Exhibit "A" (**"Contractor"**), pursuant to a contract with Borrower (**"Construction Contract"**). Borrower will also use part of the Loan to pay other costs and expenses related to the development and improvement of the Construction Parcel and approved by Bank. Borrower and Bank acknowledge and agree that, notwithstanding anything to the contrary set forth herein, the lien of the Deed of Trust against the title for the Tesco Parcel (and the Tesco Parcel only) shall be a third position lien, subordinate to the deeds of trust now shown as liens against the Tesco Parcel, provided that the lien of the Deed of Trust with respect to the Construction Parcel shall be a first position lien.

3. **Loan Proceeds.** The proceeds of the Loan available to be advanced to Borrower (**"Loan Proceeds"**) are the original principal amount of the Note less closing costs and expenses set forth in a loan closing statement prepared in connection with the Loan. The Loan Proceeds will be disbursed to Borrower subject to the terms of this Agreement. Advances (defined below) will be deposited by Bank into a non-interest bearing checking account with Bank (**"Account"**). The Loan shall be disbursed on a line-item basis in accordance with the budget (**"Approved Budget"**) in the form of a cost breakdown attached hereto as in Exhibit "C" and in accordance with the provisions of this Agreement. The Approved Budget shall not be amended without the written consent of Bank, except as otherwise provided herein. In addition, Borrower shall

deposit with Bank for deposit in the Account such sums, if any, as may be required by Bank from time to time to cause the Loan to at all times be "**in balance**". The Loan shall be deemed to be in balance only when the un-disbursed Loan Proceeds, less amounts, if any, in the Interest Reserve (defined in Section 4.7), shall equal or exceed the amount necessary to complete the Project in accordance with the Approved Budget. Sums advanced by Bank hereunder, and sums deposited by Borrower into the Account, shall be advanced by Bank to pay costs of the construction of the Project (**the "Advances" or, individually, an "Advance"**). Bank shall have no obligation to make any Advance of the Loan until all sums so deposited by Borrower have first been advanced for costs of construction of the Project. Borrower agrees that the deposit of net Loan Proceeds into the Account shall constitute full and complete consideration for the Note and Security Documents.

4. **Disbursement Procedures and Amounts.**

4.1 Advance Requests/Limitations. Prior to any Advance provided for herein, Borrower shall present to Bank, or (at Bank's option) the Construction Control Agent (defined below), a written request for an Advance in the form of requisition attached hereto as **Exhibit "D"** ("**Advance Request**") that shall state the amount of the Advance sought and a statement of the cost of the work performed for which such Advance is sought. Each Advance Request shall delineate each item of material and labor (and the cost thereof) provided for the Project up to the date of such Advance Request from the date hereof, or the date of the most recent Advance by Bank, if any, whichever is later. Such Advance Request shall constitute a representation and warranty on the part of Borrower that the amount of funds requested has been expended on the Project. Borrower shall submit Advance Requests not more frequently than once each calendar month, unless Bank and Borrower agree on more frequent disbursements. Upon receipt of the Advance Request, Bank may, at its sole discretion and option, cause an estimate and/or inspection to be made of the progress of construction. If such estimate and/or inspection show that construction is proceeding diligently in accordance with this Agreement and in accordance with the Plans and Specifications, and if all conditions to Advances set forth in this Agreement have been fulfilled, Bank will make an Advance into the Account for Borrower. If there is an Event of Default (defined hereinafter), the Bank may, in its sole and absolute discretion, make Advances directly to the Contractor or to subcontractors, laborers, or materialmen who have provided goods or performed services in connection with the Project. Bank may also require verification of the Advance Request by Contractor and the Architect or other consultant acceptable to Bank. At the election of Bank, at its sole discretion and option, (i) checks drawn on the Account shall contain lien release provisions in Bank's prescribed form and must be endorsed personally by the payee, and/or (ii) Bank may require separate lien releases satisfactory to Bank to be executed and submitted covering the sums to be disbursed and any prior Advances.

4.2 Construction Control. Disbursement of Loan Proceeds shall be made by the Bank to the Borrower by means of Bank's "Voucher Control Department," and upon that department's receipt of a report, satisfactory in form and content to Bank in the exercise of its sole and absolute discretion, from an inspector selected by such department, showing that the construction

of the Project is progressing in accordance with the terms of this Agreement and in accordance with the Plans and Specifications (with the Borrower to pay the costs of such inspections and voucher control), and with such amounts to be disbursed for the construction of the Improvements as shown on the Approved Budget. Upon the occurrence of an Event of Default, disbursement of Loan Proceeds may be made by the Bank through a third party construction control agent designated by Bank ("**Construction Control Agent**") (provided at Borrower's cost), upon the same conditions. Borrower covenants that it shall supply to Bank such copies of contracts, invoices, cost data, releases, lien releases, change orders and any other materials, information and other data as may be required by Bank to support, verify and otherwise confirm any disbursement of Loan Proceeds. Bank shall have no obligation to see that the disbursements made by it to Borrower or any designee of Borrower are actually used by that party to pay for labor and materials furnished for construction of the Project. Borrower acknowledges that this is its responsibility, and Borrower assumes all risks in connection with any disbursement to any such designee.

4.3 Amounts.

(a) Bank will make Advances to pay for the construction costs approved by Bank and shown on the most recently approved cost breakdown in the form attached hereto as **Exhibit "C"**, which will consist only of the costs of labor performed on the work of construction and materials to be incorporated into the work of construction, together with that portion of any overhead and Contractor's fee approved by Bank. At Bank's sole discretion, it may limit the amount of each Advance to ninety percent (90%) of the amount of each Advance requested, and the aggregate amount of all such Advances made to an amount not to exceed ninety percent (90%) of the amount of the Loan. The amounts of all retentions under the foregoing shall be disbursed after completion of construction, the expiration of the period for the filing of mechanic's and materialmen's liens and the issuance of the title insurance endorsements required under Section 5.3(c) hereof.

(b) Bank will make Advances to pay for Borrower's approved financing and development costs shown on the most recent Approved Budget, upon delivery to Bank of satisfactory evidence that the costs have been incurred and are payable.

(c) Notwithstanding anything herein to the contrary, the aggregate amount of all Advances will never at any time exceed the lesser of i) 80% of the appraised value of the Property (as determined by the Bank in the reasonable exercise of its discretion), or ii) 90% of the "**Eligible Development Costs**" of the Project (including the cost of the Property). Borrower acknowledges that this condition may limit the aggregate amount of the Advances to a figure that is less than the stated amount of the Loan, and it may require Borrower to make certain principal payments to the Bank or on the Loan or pay additional costs of the Project. The term "**Eligible Development Costs**" shall mean those costs of the Project that have been set forth in the Approved Budget.

(d) Prior to any Advances hereunder Borrower must provide evidence satisfactory to Bank that Borrower has paid for, or is able to pay for, at least 10% the Eligible Development Cost, based on the current market value of the lots that constitute the Property (as such lots are improved).

(e) Within seven (7) months from the date of this Agreement Borrower shall provide Bank with fully executed leases for the Construction Parcel (satisfactory to Bank as to form, content, and tenant) for at least fifty percent (50%) of the leaseable area of the Construction Parcel. Upon compliance with such condition precedent, Bank shall release the Tesco Parcel from the lien of the Deed of Trust (so long as there is i) no Event of Default, and no occurrence or non-occurrence that with the passage of time or the giving of notice would constitute an Event of Default, ii) Borrower is otherwise in compliance with the terms of this Agreement, the Deed of Trust, and the other Security Documents, and iii) so long as the principal balance of the Loan has been reduced by an amount equal to the appraised value of the Tesco Parcel). Within eighteen (18) months from the date of this Agreement Borrower shall provide Bank with fully executed leases for the Construction Parcel (satisfactory to Bank as to form, content, and tenant) such that the Debt Service Coverage Ratio for the Construction Parcel is at least 1.1 to 1.0. If Borrower fails to meet the leasing requirements set forth in this subparagraph, Borrower shall immediately make a \$500,000.00 principal reduction to the Loan.

(f) Prior to any Advances for the vertical construction of the Project, Borrower shall have provided to Bank letters of intent for the leasing of at least thirty five percent (35%) of the leaseable area of the Construction Parcel, satisfactory to Bank as to form, content, and tenant.

4.4 Other Advances. Bank is hereby irrevocably authorized by Borrower, but is not obligated, to make Advances, with prior written notice to Borrower, in its sole discretion other than those specified in Section 4.3 upon the following occurrences and without receipt of an Advance Request therefor;

(a) to pay any person(s) deemed by Bank to have a claim arising out of the Project (in which event Bank will notify Borrower after such payment is made), subject to Borrower's right to contest such payment; and

(b) to pay to itself any sum which in accordance with any provision of this Agreement is due and payable by Borrower to Bank, including, without limitation, fees owed by Borrower to Bank, amounts Borrower is required to reimburse Bank under this Agreement, the Note or any Security Document, and any other amounts required to protect Bank's security interest in any of the collateral granted under any Security Document.

4.5 Obligatory Nature of Advances. Notwithstanding anything contained herein to the contrary, it is specifically understood and agreed by Borrower that all Advances and other funds furnished by Bank and employed in the performance of the obligations of Borrower under this Agreement and any other Security Document shall be deemed advanced by Bank under an

obligation to do so regardless of the identity of the person or persons to whom such Advances or funds are furnished. It is further specifically understood and agreed by Borrower that all funds advanced by Bank hereunder are deemed to be advanced in the reasonable exercise of its judgment, that the same are needed to complete the Project or to protect its security hereunder and under the Security Documents, are to be deemed obligatory advances hereunder and are to be added to the total indebtedness secured by the Security Documents, and said indebtedness shall be increased accordingly.

4.6 Conditions Pertaining to Advances. The making of any Advance by Bank shall not constitute an assent or waiver by Bank to any default, breach or noncompliance by Borrower that may have occurred or arisen prior to such Advance, and shall not be deemed approval or acceptance by Bank of any work performed in connection with the Project. Borrower agrees to use all Advances made by Bank hereunder only for these items of construction appearing on the Advance Request (defined in Section 4.1) except for Advances used to reimburse Borrower for expenditures approved by Bank and previously made by Borrower from other funds.

4.7 Payment.

(a) Interest on Advances. Interest on the Advances under this Agreement shall accrue at the non-default rate specified in the Note. Interest shall be computed only upon the aggregate amount of the Advances at any given time outstanding, and shall be computed on the basis of a 365/360 day year. Bank may, in its sole discretion, set aside at the closing of the Loan a reserve for interest ("**Interest Reserve**") in an amount, as estimated by Bank, to provide for the payment of interest on funds to be disbursed during the estimated construction period. Bank (i) may at any time, and (ii) shall at such times as Borrower is not in default hereunder and provided the Loan is in balance, at the request of Borrower, disburse the Interest Reserve or portion thereof to pay interest then due on the Loan by reducing the amount of the Interest Reserve by such interest amount then due. Any revenues generated with respect to the Project shall be applied first toward payment of interest due under the Loan; provided, however, that under the terms of the Approved Budget the Interest Reserve shall be used to pay interest until such time as the Project generates revenues, at which time revenues generated from the Project shall be used to pay interest due as provided in the Approved Budget. Amounts in the Interest Reserve shall be applied in payment of interest due on the Loan only to the extent revenues generated from the Project are insufficient to pay current interest. No interest shall accrue upon the Interest Reserve until any disbursement thereof, whereupon the amount of such disbursement shall be deemed an Advance and shall bear interest from the date of disbursement. At maturity or the acceleration of the Loan, interest on the then outstanding principal balance of the Loan shall accrue at the default rate specified in the Note.

(b) Principal. Borrower shall pay the outstanding principal amount of the Loan in accordance with the Note. The entire outstanding principal amount of the Loan, together with all accrued and unpaid interest and all other amounts owed by Borrower to Bank in connection with the Loan, shall be due and payable in full on the maturity date stated in the Note ("**Maturity**").

Date”), unless sooner payable pursuant to the terms of this Agreement, by reason of acceleration of the Maturity Date or otherwise.

4.8 Additional Security. Borrower assigns and grants to Bank, as additional security for the performance of Borrower’s obligations under this Agreement, a security interest in the proceeds of the Note and each Security Document, Borrower’s interest in all Loan funds held by the Bank, whether or not disbursed, including without limitation, the Interest Reserve, all funds deposited by Borrower with Bank under this Agreement, all governmental permits obtained for the lawful construction of the Improvements, and all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Improvements. Upon any default of Borrower, Bank may use any of the foregoing for any purpose for which Borrower could have used them under this Agreement or with respect to the construction or financing of the Improvements. Bank will also have all other rights and remedies as to any of the foregoing that are provided under applicable law or in equity.

5. **Disbursement Conditions.**

5.1 Conditions Precedent. Prior to the first Advance hereunder, Borrower shall, upon request, be required to submit to Bank the following each in form and content approved by Bank (unless Bank has waived any such consent in writing):

(a) This Agreement, the Note, the Deed of Trust (which must be duly recorded), any financing statements required by Bank (which must be duly filed) and all other Security Documents and appropriate resolutions to borrow executed by Borrower, all duly executed by Borrower.

(b) An Assignment of Rents and Leases with respect to the Property executed by Borrower, and copies of all leases for the Property in effect as of the date of the first Advance and (as an ongoing obligation of Borrower) copies of all leases for the Property and modifications of such existing and future leases that shall be made thereafter. (Borrower acknowledges that the terms of all such leases are subject to the approval of the Bank, in the reasonable exercise of its discretion.)

(c) A preliminary title report, issued by a title insurance company acceptable to bank (“**Title Company**”) relating to the Property and showing all exceptions to title.

(d) An ALTA Lender’s extended coverage policy of title insurance (“**Title Policy**”) issued by Title Company at Borrower’s expense upon recordation of the Deed of Trust (or assurance satisfactory to Bank from the Title Company that the Title Policy will be issued), which Title Policy shall be in liability amount and form satisfactory to Bank. This Title Policy must show the Deed of Trust as first lien on the Property, subject only to exceptions approved in writing by Bank, and shall have attached any endorsements required by Bank.

(e) An assignment of all equipment leases and management contracts for the Property, if any.

(f) The Plans and Specifications, which have been approved by Bank, and which must be approved by all other persons or agencies whose prior approval is required by law or by any covenants, or restrictions applicable to the Project, and an assignment thereof to Bank, and all insurance policies required by the Security Documents. In addition, Borrower agrees to provide Bank with all plans and specifications for the Project that may be prepared subsequent to the execution of this Agreement, and to unconditionally assign all such subsequent plans and specifications to Bank.

(g) Evidence satisfactory to Bank that all required approvals pertaining to construction of the Project, including all necessary building permits, contracting licenses, or consents of governmental authorities having jurisdiction over the Property have been obtained and remain in force and effect, and that the Property is suitably zoned for its intended use. (Borrower acknowledges and agrees that all such approvals, permits, licenses and/or consents must remain in full force and effect throughout the term of this Agreement, to the extent that the same are necessary/required for the lawful construction and/or use of the Project).

(h) A copy of the Construction Contract, and all subcontracts and bids related thereto, a written cost breakdown of the value of all labor and materials to be performed under the Construction Contract in form satisfactory to Bank, an assignment of the Construction Contract to Bank, and (at Bank's sole and absolute option) an assignment by the Contractor of part or all of Contractor's subcontracts with respect to the Property.

(i) A current ALTA/ACSM survey of the Property by a registered engineer or land surveyor correctly showing any improvements and the relationship of any such improvements to the property line of the Property and correctly showing any other items required by Bank or the Title Company.

(j) Payment by Borrower of a **"construction loan fee"** in the amount of \$435,000.00, which fee is a condition precedent to any obligations of Bank hereunder and which is payable concurrently with the execution of this Agreement; payment by Borrower of an **"extension loan fee"** in the amount of one half of one percent (0.5%) of the face principal amount of the Note, which fee is a condition precedent to any obligations of Bank hereunder to extend the Maturity Date of the Note, and which is payable concurrently with the extension of the Note. All such loan fees shall be deemed fully earned when paid and shall be non-refundable.

(k) A Phase I environmental assessment of the Property, an environmental use questionnaire relating to the Property, other data, materials and information relating to the environmental condition and status of the Property, and such further environmental assessments, soils reports, investigations, reviews and studies as may be reasonably necessary to verify that the Property is free from Hazardous Materials (defined below) contamination.

(l) A list of all of Contractor's sub-contractors, which list must be approved by Bank in the reasonable exercise of its discretion.

(m) Borrower shall have delivered to Bank certified copies (certified by the managing member of Borrower) of Borrower's articles of organization and operating agreement.

(n) An appraisal of the Property, satisfactory to Bank in the sole and absolute exercise of its discretion, showing the value of the Property, as the Improvements are completed, to be at least an amount sufficient to maintain a "loan to value ratio" of no more than 80%. Borrower acknowledges and agrees that if at any time such loan to value ratio exceeds 80%, Borrower shall immediately, upon Bank's demand, reduce the principal balance of the Loan so that such loan to value ratio does not exceed 80%. Bank may, at Borrower's expense, require a re-appraisal of the Property from time to time, with such appraisals to be in a form acceptable to Bank and completed by an appraiser acceptable to Bank.

(o) There shall have been recorded in the Official Records of Clark County, Nevada, with respect to the Property, all subdivision and parcel maps required by Nevada law with respect to the Property.

(p) Bank shall have approved the form and substance of all conditions, covenants and restrictions, recorded or to be recorded in the Official Records of Clark County, Nevada, that govern the Property (and Borrower further agrees that no conditions, covenants and restrictions shall be so recorded without Bank's prior written consent).

(q) A Guaranty of the Loan ("**Guaranty**"), in a form and substance acceptable to Bank in its sole discretion, executed by Jeffrey B. Guinn, Monica A. Guinn, Jeffrey B. Guinn and Monica A. Guinn, as Trustees of the Del Mar Trust, dated April 16, 2001, Sean P. Corrigan, Lisa D. Corrigan, Sean P. Corrigan and Lisa D. Corrigan, as Trustees of the S&L Corrigan Family Trust, dated September 24, 1998, Kent Barry, Mary Sunshine Barry, R. Kent Barry (also known as Kent Barry) and Mary Sunshine Barry, as Trustees of the Barry Family Trust, dated November 4, 2003, and Pacific Sunset Development, LLC, a Nevada limited-liability company ("**Guarantor**"). Each Guarantor must covenant and agree that the respective Guarantor will not, without Bank's prior written consent (which will not be unreasonably withheld, delayed, or qualified) transfer, hypothecate, encumber, sell or otherwise dispose of any material asset outside of the normal course of business.

(r) A soils report, prepared by an environmental consultant or engineer acceptable to Bank, stating that the condition of the soils in and on the Property is acceptable for the construction of the Project.

(s) Certification from the appropriate governmental agency as to the propensity for flooding on and around the Property.

(t) A certification from each of the Architect, the Contractor and the engineers for the Project i) that all utilities are currently available to the boundaries of the Project, ii) that the Project complies with, or when built, will comply with all applicable zoning ordinances and other applicable laws, and can be operated for the purposes for which the Project was constructed, iii) that all permits, licenses and approvals have been issued by the appropriate governmental authorities, iv) that the Project will be constructed above the "100 year flood plane" for the Property, and v) that the budget submitted concurrently herewith to the Bank adequately provides for all sums necessary to complete the Project.

(u) Such other documents or information as Bank may reasonably require.

5.2 Other Conditions Precedent to Advances.

(a) Prior to making each Advance hereunder, Bank in its sole discretion may require: that Borrower furnish Bank with (i) receipted bills and releases of lien rights covering all parties who have furnished labor or materials for the Project, which shall be in form and substance satisfactory to Bank, or at Bank's election, that the Title Company issue a Title Policy endorsement, at Borrower's expense, insuring the priority of any Advance, (ii) with respect to the first Advance to be made following completion of foundations for the building(s) for the Improvements or any part thereof, that the Title Company issue a Title Policy endorsement, at Borrower's expense, insuring completion of such foundations without encroachment, and (iii) there shall not be any Event of Default under this Agreement, or any event or condition which, with the giving of notice, would constitute an Event of Default under this Agreement.

(b) By submitting any Advance Request, Borrower shall be deemed to represent and warrant as follows: (i) All representations and warranties contained in this Agreement are correct as though made as of the date of the Advance Request; and (ii) there exists no Event of Default under this Agreement, or any event or condition which, with the giving of notice or the passage of time or both, would constitute an Event of Default under this Agreement.

5.3 Conditions Precedent to Final Advance. In addition to the above conditions precedent to Advances made hereunder, Bank, in its sole discretion, may require any of the following before making the final Advance for the Improvements.

(a) A certificate of occupancy for the Improvements.

(b) An as-built ALTA/ACSM survey by a registered engineer or land surveyor certified to Bank and the Title Company showing adjoining streets and alleys, the location of the Improvements and the existence of any easements, visible or recorded, upon which survey such engineer or surveyor certifies that the survey correctly shows the relationship of the buildings or other structures to the property lines indicated thereon, that there are no encroachments of

buildings or structures either onto or off of the Property except as shown on the survey, and that the setbacks are in conformity with the local zoning ordinances.

(c) Issuance by the Title Company of a title policy and reasonable endorsement(s), at Borrower's expense, that insure the lien-free completion of the Improvements, with the Borrower and the Bank to agree to such endorsements as part of escrow instructions to be given by them at such time as the Deed of Trust is recorded in the official records of the Clark County, Nevada, recorder.

(d) A certificate of Architect or other consultant for the Project acceptable to Bank that the construction of the Improvements has been completed in accordance with the Plans and Specifications and in accordance with all applicable laws, ordinances and regulations and that all required utilities, services, streets and other off-site improvements are complete and adequate to service the Project as completed.

(e) There shall not be any Event of Default under this Agreement or any event or condition which, with the giving of notice, would constitute an Event of Default under this Agreement.

(f) Any other condition Bank may reasonably impose.

6. **Right to Inspect Project.** Bank, or parties designated by Bank, shall have the right to enter upon and inspect the Property from time to time at all reasonable times, upon reasonable notice, for the purpose of determining that the Project is being completed in accordance with the Plans and Specifications and that the other terms and conditions of this Agreement are being observed. Bank is under no obligation to construct or supervise the Project and any inspection by Bank of the Project is for the sole purpose of protecting the security of Bank. Such inspection is not to be construed as a representation that there has been or will be strict compliance on the part of the Contractor with the Plans and Specification, or that the Project will be free from faulty material or workmanship. Borrower will make or cause to be made such other independent inspections as it may desire for its own protection and Borrower will rely on its own judgment with respect to the construction of the Project.

7. **Representations and Warranties of Borrower.** Borrower, in addition to all other representations made and warranties given herein, represents and warrants to Bank as follows:

(a) No condemnation or eminent domain proceeding has been commenced or, to the knowledge of Borrower, threatened against the Property.

(b) Borrower has no knowledge of any notices or violations of federal or state law or municipal ordinances, including without limitation any Environmental Laws (defined below), or orders or requirements of any governmental body or authority to whose jurisdiction the Property or the Project are subject.

(c) The execution, delivery and performance of the transactions contemplated by this Agreement, the Note and the Security Documents will not conflict with or result in a breach of the terms or provisions of any existing law, regulation or order of any court or governmental body or authority, or any other document, instrument or agreement to which Borrower is a party or is bound.

(d) This Agreement, the Note and the Security Documents to which Borrower is a party will be validly executed and delivered by Borrower and will constitute the legal, valid and binding obligations of Borrower, enforceable against it in accordance with their respective terms.

(e) There are no actions or proceedings pending or threatened against Borrower, any real property or project owned by Borrower, the Property or the Project, other than such as may arise in the ordinary course of business, which may in any manner whatsoever substantially affect the validity, priority or enforceability of the Agreement, the Note or the Security Documents or the construction, use, occupancy and operation of the Project or any part thereof.

(f) Telephone services, gas, electric power, storm sewers, sanitary sewer and water facilities are available to the Property, adequate to serve the Project and are not subject to any conditions, other than normal charges to the utility supplier, which would limit the use of such utilities. All streets and easements necessary for construction and operation of the Project are available to the boundaries of the Property.

(g) Except as otherwise disclosed by Borrower to Bank, neither Borrower nor, to the best of Borrower's knowledge, after due inquiry, any previous owner, tenant, occupant or user of the Property used, generated, released, discharged, stored or disposed of any Hazardous Materials (defined below) on, under, in or about the Property, or transported any Hazardous Materials to or from the Property.

(h) The Property and the Project (as constructed in accordance with the Plans) comply with or shall comply with, as required, the federal Endangered Species Act and all Environmental Laws, and the Americans With Disability Act.

(i) To the best of Borrower's knowledge, after due inquiry, there is no fact which Borrower has not disclosed to Bank in writing which materially adversely affects or, so far as Borrower can now foresee, will materially adversely affect the Project or the ability of Borrower to perform any of its obligations arising under this Agreement.

(j) All financial information furnished to Bank by Borrower, or its representatives with respect to Borrower in connection with the Loan (i) is complete and correct in all materials respects, (ii) accurately represents the financial condition of Borrower at the date of issuance and (iii) has been prepared in accordance with generally accepted accounting principles, consistently applied. Borrower has no material or contingent liability not disclosed to Bank in writing and there is no material lien, claim, charge or other right of others of any kind (including liens or retained security titles of conditional vendors) or any property of Borrower not disclosed in such financial statements or otherwise disclosed to Bank in writing.

(k) There has been no material adverse change in the condition, financial or otherwise, of Borrower since the dates of the latest financial statements furnished to Bank by Borrower. Since those dates, Borrower has not entered into any material transaction not disclosed in such financial statements or otherwise disclosed to Bank in writing.

(l) Borrower has filed all required federal, state and local tax returns and has paid all property taxes and other taxes due (including interest and penalties, but subject to lawful extensions disclosed to Bank) with respect to Borrower or the Project, other than taxes being promptly and actively contested in good faith and by appropriate proceedings. Borrower is maintaining adequate reserves for tax liabilities (including contested liabilities).

(m) The Approved Budget is based on information deemed reliable by Borrower and represents Borrower's best estimate of all costs required to complete the Project.

(n) Borrower currently uses no trade name other than its actual name. For purposes of this Agreement, Borrower's principal place of business is at its address shown on Exhibit "A".

(o) Borrower has good and marketable title to the Property, and the lien of the Deed of Trust shall be a first position lien, with the exception of those encumbrances disclosed by the Title Company to Bank.

(p) Borrower validly exists, and is in good standing, as a Nevada limited-liability company. The articles of organization and operating agreement for Borrower that have been delivered to Bank is both current and accurate.

(q) Borrower shall maintain all of its depository accounts related to the Project with Bank throughout the term of this Agreement.

(r) . Neither Borrower nor any Guarantor is (or will be) a person with whom Bank is restricted from doing business under regulations of the Office of Foreign Asset Control ("**OFAC**") of the Department of the Treasury of the United States of America (including, those Persons named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order (including, the September 24, 2001 Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or otherwise be associated with such persons. In addition, Borrower hereby agrees to provide Bank with any additional information that Agent may deem necessary from time to time in order to ensure compliance with all applicable laws concerning money laundering and similar activities.

The above representations and warranties and any representations and warranties made by Borrower in Borrower's application for the Loan or any loan commitment issued by Bank shall survive the making of any Advance hereunder and will be deemed to have been made each time an Advance is made hereunder.

8. **Covenants of Borrower.** In addition to any other obligations and duties of Borrower hereunder, Borrower covenants as follows:

(a) Borrower shall give notice immediately to Bank of any notice of any claim made by any party arising in connection with or against the Project, the Property or Borrower.

(b) Borrower shall commence the pre-development work to be completed with the proceeds of the Loan no later than the commencement date that has been represented to Bank. Borrower shall complete such work no event later than the date ("**Completion Date**") specified in Exhibit "A".

(c) Unless Bank otherwise agrees in writing, Borrower shall use all Loan Proceeds solely for expenditures relating to the construction of the Project and the purchase of equipment for the Project.

(d) Borrower shall obtain Bank's prior written approval of any material change in the Plans and Specification or any other change order under the Construction Contract if the cost of such change order exceeds the amount set forth on Exhibit "A" (\$10,000.00 for an individual change order and \$25,000.00 in the aggregate for multiple change orders less than \$10,000.00). If it reasonably appears to Bank that any change may increase the total costs of completing the Improvements, Bank may require Borrower to deposit additional non-interest bearing funds with Bank sufficient to cover the increased costs as a condition to giving its approval.

(e) Upon the occurrence of an Event of Default, at Bank's option, Borrower shall obtain and pay for performance and labor and material payment bonds in form and substance and

issued by a surety acceptable to Bank in dual obligee form covering the performance of the Contractor under the Construction Contract.

(f) Borrower shall comply with, and keep in effect, all permits and approvals obtained from any governmental bodies that relate to the lawful construction of the Improvements and to comply with all existing and future laws, regulations, orders and requirements of all governmental, judicial, or other legal authorities having jurisdiction over the Property or Improvements, and with all recorded restrictions affecting the Property.

(g) Borrower shall furnish Bank from time to time at the request of Bank, in a form acceptable to Bank, correct lists of all contractors, subcontractors, laborers, suppliers, materialmen and other lien claimants employed in connection with construction of the Improvements and true and correct copies of all executed contracts and subcontracts. Bank may contact Contractor or any subcontractor to verify any facts disclosed in the lists.

(h) Borrower shall not, without Bank's prior written consent, purchase or install materials, equipment, fixtures, or articles or personal property of Borrower placed in the Improvements under any security agreement or other agreement in which the seller reserves or purports to reserve title or the right of removal or repossession, or the right to consider them personal property after their incorporation in the work of construction, unless authorized by Bank in writing.

(i) Upon Bank's demand, Borrower shall pay and discharge all claims and liens for labor done and materials and services furnished in connection with the construction of the Improvements. Borrower will have the right to contest in good faith any claim or lien, provided that it does so diligently and without prejudice to Bank. Upon Bank's request, Borrower will promptly provide a bond, cash deposit, or other security reasonably satisfactory to Bank to protect Bank's interest and security should the contest be unsuccessful.

(j) In addition to any insurance requirements set forth in the Deed of Trust (which shall control in the event of a conflict between the terms of this Agreement and the Deed of Trust), Borrower shall maintain in force, until full payment of the Loan, all insurance required by law or the Bank, flood insurance, business interruption insurance, worker's compensation insurance (which Borrower will also require Contractor to keep in force with respect to the Project), public liability insurance (in an amount of not less than the amount Bank may require in the reasonable exercise of its discretion), and builder's all risk insurance with course of construction endorsement (in an amount of not less than the amount Bank may require in the reasonable exercise of its discretion). The policies must be approved by Bank as to amounts, form, risk coverage, deductibles, insurer, and loss payable and cancellation provisions. Bank's approval, however, shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. All such policies shall, in Bank's sole and absolute discretion, name the Bank as an additional loss payee or shall include a mortgagee endorsement acceptable to Bank. The Bank may, in the reasonable exercise of discretion, alter the insurance required under

the terms of this Agreement, the Deed of Trust or the Security Documents pursuant to the terms of such reports. Borrower shall also maintain, and shall require Contractor to maintain, workmen's compensation insurance in adequate amounts.

(k) Borrower shall comply with, and cause the use and operation of the Property, and all activities of the Contractor and all subcontractors on the Property or with respect to the Project, at all times, to comply with all applicable Environmental Laws. Borrower shall not cause or permit the presence, use, generation, release, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any Hazardous Materials to or from, the Property, except for any such Hazardous Materials, the use or presence of which are necessary or customary in construction projects similar to the Project, provided that any such use or presence shall occur only under and in compliance with any required governmental permits and otherwise fully comply at all times with all applicable local, state and federal laws and regulations relating to such use or presence.

(l) Borrower shall at all times comply, and cause all of its officers, employees and agents to comply with the provisions of the federal Endangered Species Act and the Americans with Disabilities Act, as the application of such Acts may affect the construction, development and use of the Project.

(m) Borrower shall pay Bank on demand any expenses suffered, incurred or paid by Bank which relate to the negotiation, preparation, execution, delivery, administration, modification, performance, enforcement and interpretation of the Loan, this Agreement, and any related matters or the exercise or defense of Bank's rights and actions hereunder, or which relate to the Note or the Security Documents, including without limitation, any charges for surveys, appraisals and inspections, and reasonable attorneys' fees, costs or expenses arising out of any of the foregoing.

(n) Borrower shall deposit into a separate account segregated with Bank, within five (5) days of receipt of notice from Bank that the Loan is not in balance, such sums as shall be necessary to cause the Loan to become in balance.

(o) Borrower shall comply in all material respects with all laws, regulations and ordinances and requirements of all government agencies and all third parties relating to Borrower, the Project or the Property or Borrower's business thereon.

(p) Borrower shall promptly pay prior to delinquency all general and special real property taxes and assessments imposed against the Property and all other taxes, license fees and assessments imposed on Borrower, the Project or the Property.

(q) Borrower shall maintain complete books of account and other records reflecting its operations (in connection with any other businesses as well as with respect to the Property).

(r) Borrower shall execute and acknowledge, or cause to be executed and acknowledged, and delivered to Bank all documents, and take all actions, reasonably required by Bank from time to time to confirm the rights created or now or hereafter intended to be created under this Agreement, the Note or any other Security Document, to protect and further the validity, priority and enforceability of the Security Documents, to subject to the Security Documents any property intended by the terms of this Agreement, the Note or any Security Document to be covered by the Security Documents, or otherwise to carry out the purposes of this Agreement and the transactions contemplated hereunder.

(s) Borrower shall give notice to Bank, within ten (10) days of Borrower's learning thereof, of each of the following:

(i) any litigation or claim affecting or relating to the Property and involving an amount in excess of \$10,000.00; and any litigation or claim that might subject Borrower to liability in excess of \$10,000.00, unless such claim is within the coverage of applicable insurance policies and the defense of such claim has been tendered to and accepted without reservation by the carriers thereunder, and the aggregate of all such claims, and the aggregate of all such claims does not exceed the policy limits for the applicable insurance policies;

(ii) any dispute between Borrower and any governmental agency relating to the Property or the Project, the adverse determination of which might materially affect the Property or the Project;

(iii) any trade name hereafter used by Borrower and any change in Borrower's principal place of business;

(iv) any circumstances which render the Approved Budget materially inaccurate with respect to any project costs set forth therein;

(v) any aspect of the Project that is not in substantial conformity with the Plans and Specifications;

(vi) the creation or imposition of any mechanic's lien or any other lien against the Property;

(vii) any Event of Default or event which, with the giving of notice or the passage of time or both, would constitute an Event of Default;

(viii) any material default by Borrower or any other party under any contract or Agreement with respect to the construction of the Project; and

(ix) any material adverse change in the financial condition of Borrower from the most recent financial statements of Borrower delivered to Bank.

(t) Borrower's and Guarantor's Financial Statements. Borrower and each Guarantor shall furnish to Bank, within ninety (90) days of completion but no later than April 30 of each year, a copy of the compiled financial statement of Borrower or Guarantor, respectively, prepared in accordance with accounting principles reasonably acceptable to Bank and certified by Borrower's/Guarantor's chief financial officer and an accountant or accountants reasonably acceptable to Bank. Borrower and Guarantor agree and authorize Bank and such accountant or accountants to, if Borrower/Guarantor is unable to provide Bank information concerning Borrower's/ Guarantor's financial statements that Bank deems necessary, communicate directly with respect to Borrower's/ Guarantor's records and financial statements.

(u) Tax Returns. Borrower and Guarantor shall furnish to Bank, within thirty (30) days of filing, copies of its federal tax returns and all extensions therefor and schedules and attachments thereto (including, without limitation, K-1's)

(v) Other information. In addition to the information required above, Borrower shall provide to Bank such other information or documents as Bank may reasonably require.

9. **Default by Borrower.** The occurrence of any of the following events shall constitute an **Event of Default** under this Agreement:

(a) Borrower fails to make any payment of interest or principal when due under the Note (after the expiration of any applicable contractual cure period).

(b) Borrower fails to make any deposit of funds required under this Agreement within ten (10) days after written notice from Bank.

(c) Borrower fails to comply with any other covenants contained in this Agreement that calls for the payment of money and does not cure that failure within ten (10) days after written notice from Bank.

(d) Borrower fails to comply with any covenant contained in this Agreement, and does not cure that failure within twenty (20) days after written notice from Bank; provided, however, that it shall not be an Event of Default if Borrower diligently undertakes efforts to effectuate a cure within such 20-day period and is unable to do so because the nature of the cure in question requires more than 20 days to complete, except that in no event shall such period be extended for more than ninety (90) days.

(e) Construction of the Improvements is not completed in accordance with the Plans and Specifications or is not completed on or before the Completion Date.

(f) Construction of the Improvements is halted prior to completion for any period of twenty (20) consecutive days for any cause that is not beyond the reasonable control of Borrower, Contractor and any subcontractors, which causes beyond the reasonable control of Borrower, contractor or any subcontractor for the purposes of this subsection (f) shall be limited to acts of God, flooding, strikes, lockouts, or other labor trouble, materially adverse weather conditions, fire or other casualty, governmental preemption in connection with a national emergency, any rule, order or regulation of any governmental agency or any department or subdivision thereof, or inability to secure materials or labor because of any such emergency, rule, order, regulation, war, civil disturbance or other emergency, cause or event beyond the reasonable control of Borrower.

(g) A petition in bankruptcy is filed by or against Borrower, the Contractor or any Guarantors, or a receiver or trustee of any property of Borrower, the Contractor or any Guarantors is appointed, or Borrower, the contractor or any Guarantors files a petition for an arrangement under any provisions of federal, or state bankruptcy or receivership laws, or any other law, state or federal (unless, in any such case, such petition is dismissed within ninety (90) days of filing), or makes an assignment for the benefit of creditors or is adjudged insolvent by any state or federal court.

(h) A default occurs under the Note and/or any other Security Documents (subject to any applicable contractual cure period).

(i) All or any material portion of the Property is condemned, seized or appropriated by any governmental agency.

(j) The Project is materially damaged or destroyed by fire or other casualty to such an extent that Bank reasonably concludes that (i) such damage will preclude completion of the Project by the required completion date set forth in this Agreement or (ii) remaining undisbursed Loan Proceeds, if any, plus funds derived from insurance proceeds, if any (collectively, "**Available Proceeds**"), will not be sufficient to pay in full the costs of repair, reconstruction and completion (if applicable) of the Project and Borrower fails to deposit into the Account within twenty (20) days after written request therefor, an amount sufficient to pay the difference between estimated costs of repair, reconstruction and completion (if applicable) and the Available Proceeds.

(k) Subject to the terms of any contract with a contractor for the Project executed prior to the date hereof, any contractor for the Project whose contract exceeds \$10,000.00 in value breaches such contract, and Borrower fails to enter into an agreement with a substitute contractor reasonably acceptable to Bank within the Approved Budget allocation for such contract, within twenty-five (25) days after such event (provided, however, if the substitute contract price exceeds the Approved Budget allocation for such contract, Borrower shall deposit with Bank an amount equal to such excess in a segregated interest-bearing account, which funds

shall be used to pay the first Project costs incurred under such substitute contact, until such account is depleted).

(l) Borrower or any of the non-individual Guarantors is dissolved, liquidated or terminated, or Borrower or any of the non-individual Guarantors is sold or otherwise transferred, or all or substantially all of the assets of Borrower or any Guarantors are sold or otherwise transferred without Bank's prior written consent.

(m) The Guaranty, or any other guaranty of the Loan, is repudiated, revoked or terminated without Bank's prior written consent, or any of the Guarantors claim that his/her/its Guaranty is ineffective or unenforceable, in whole or in part, and for any reason, with respect to amounts then outstanding or amounts that might in the future be outstanding, and Borrower fails to provide Bank, within sixty (60) days thereafter, with a substitute guaranty reasonably acceptable to Bank (provided, however, that until such time as Borrower provides Bank with a substitute Guarantor(s) Bank will not be obligated to make any Advance).

(n) Any individual Guarantor of any of Borrower's obligations hereunder dies and Borrower fails to provide Bank, within sixty (60) days thereafter, with a substitute guaranty reasonably acceptable to Bank (provided, however, that until such time as Borrower provides Bank with a substitute Guarantor(s) Bank will not be obligated to make any Advance).

(o) Borrower or any Guarantors defaults in any obligation to Bank other than in connection with the Loan, subject to any applicable cure period, or there is a material adverse change in the financial condition of any Guarantors.

(p) Any representation or warranty made by Borrower in connection with this Agreement, or any document or agreement made or submitted in connection with this Agreement, is or becomes materially false or misleading.

(q) If Borrower, or any other "borrower" (as such term is defined in NRS 106.310) who may send a notice pursuant to NRS 106.380(1), with respect to the Loan or the Deed of Trust, (a) delivers, sends by mail or otherwise gives, or purports to deliver, send by mail or otherwise give, to the Bank, any participant or any other Bank (i) any notice of an election to terminate the operation of the Deed of Trust as security for any secured obligation, including, without limitation, any obligation to repay any "future advance" (as defined in NRS 106.302) of "principal" (as defined in NRS 106.345) or (ii) any other notice pursuant to NRS 106.380(1), (b) records a statement pursuant to NRS 106.380(3), or (c) causes the Deed of Trust, any secured obligation of Bank, any participant or any other Bank to be subject to NRS 106.380(2), 106.380(3) or 106.400.

10. **Remedies.** If any one or more Events of Default shall have occurred and shall continue beyond the expiration of the applicable cure period, if any, specified for such Event of Default, Bank shall have the right and power, all in the sole discretion of Bank, to exercise one or more of the following remedies.

(a) To credit any un-advanced Loan Proceeds or the Interest Reserve or contributions of Borrower to the indebtedness of Borrower under the Note, to stop funding payments from the Interest Reserve, and to declare the entire principal balance of the Note then due and payable, and thereupon Bank's obligations to disburse Loan Proceeds hereunder shall cease.

(b) To enter upon the Property, in its own right or by court appointed receiver, and construct, equip and complete the Project in accordance with the Plans and Specifications, with such changes therein as Bank may from time to time, in its sole discretion, deem appropriate, all at the risk, cost and expense of Borrower.

(c) To discontinue any work in respect of the Project commenced by Borrower or to change any course of action undertaken by Borrower without being bound by any limitations or requirements of time, whether set forth herein or otherwise.

(d) To assume the Construction Contract or any other contract relating to the Project made by Borrower and to take over and use all or any part or parts of the labor, materials, supplies and equipment contracted for by Borrower, whether or not previously incorporated in the Project, and to apply un-disbursed Loan Proceeds in payment of costs of construction or for other costs, expenses or fees incurred in connection with the Project and/or to fulfill Loan obligations of Borrower which Borrower has not fulfilled and/or to otherwise protect Bank's security.

These remedies are in addition to any other remedies which Bank may have hereunder or under the Note, the Deed of Trust or any other Security Documents, at law or in equity, including the right to foreclose any security for Borrower's obligations under this Agreement, all in such order and manner as Bank may determine in its sole and absolute discretion.

In connection with any construction undertaken pursuant to the provisions of this section, Bank may (i) engage builders, contractors, architects, engineers and others for the purpose of furnishing labor, materials and equipment in connection with the Project; (ii) pay, settle or compromise all bills or claims which are or may become liens against the Property or the Project or which have been or shall be incurred in any manner in connection with equipping and completing the Project; and (iii) take such action hereunder, or refrain from acting hereunder, as Bank may, in its sole discretion, from time to time, determine to be necessary or desirable to carry out the intent of this section. All sums paid or incurred by Bank directly or indirectly in connection with equipping and completing the Project, however incurred, shall be repaid by Borrower to Bank upon demand, with interest at the same rate as is provided in the Note to the

date of payment, and until so repaid shall be secured by the Deed of Trust and other Security Documents.

11. **Miscellaneous.**

(a) Waiver of Breach. Bank's rights and remedies under this Agreement, the Note and the Security Documents are cumulative and in addition to all rights and remedies provided by law or in equity from time to time. The exercise by Bank of any right or remedy shall not constitute a cure or waiver of any default, nor invalidate any notice of default or any act done pursuant to any such notice, nor prejudice Bank in the exercise of any other right or remedy. No waiver of any action shall be implied from any omission by Bank to take action on account of such default if such default persists or is repeated. No waiver of any default shall affect any default other than the default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Agreement, the Note or any Security Document shall be construed as a waiver of any subsequent breach of the same provision. Bank's consent to or approval of any act by Borrower requiring further consent or approval shall not be deemed to waive or render unnecessary Bank's consent to or approval of any subsequent act. Bank's acceptance of a late performance of any obligation shall not constitute a waiver by Bank of the right to require prompt performance of all further obligations; Bank's acceptance of any performance following the sending or filing of any notice of default shall not constitute a waiver of Bank's right to proceed with the exercise of its remedies for any unfulfilled obligations; and Bank's acceptance of any partial performance shall not constitute a waiver by Bank of any rights relating to the unfulfilled portion of the applicable obligation.

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

(c) Assignment. The provisions hereof shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, administrators, executors, successors, and assignees; PROVIDED, HOWEVER, that this Agreement shall be personal to Borrower and no assignment by Borrower of any of its rights under this Agreement is permitted and no such assignment shall be binding upon Bank or of any effect unless the prior written consent of Bank to such assignment has first been procured and payment of such assumption fees as Bank may require.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties hereto.

(e) Severability. It is understood and agreed by the parties hereto that if any part, term or provision of this Agreement is held by any court to be illegal or invalid, the legality and validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be illegal or invalid.

(f) Interpretation. The section headings set forth in this Agreement are for the purpose of convenience to and ready reference by the parties. It is agreed and understood by the parties that such headings shall not be deemed to define, limit or extend the scope or intent of the sections to which they pertain. Whenever the context requires, all words used in the singular will be construed to have been used in the plural and vice versa, and each gender will include any other gender.

(g) Incorporation. The preamble, exhibits and schedules attached hereto are hereby incorporated into this Agreement and made a part hereof.

(h) Performance By Bank. If Borrower shall fail to perform any obligation hereunder that requires the payment of money, including without limitation, the obligations of Borrower under Sections 8(i) and (j), Bank may perform such obligation upon fifteen (15) days' written notice to Borrower (unless Bank shall in its sole discretion determine that the security for the Loan is imminently threatened or impaired by such failure, in which case no such prior notice is required), and any sums expended by Bank pursuant to this subsection shall be deemed to be Advances and shall bear interest until repaid at the default rate of interest specified in the Note.

(i) Costs and Expenses. If any lawsuit is commenced to enforce or interpret any of the terms of this Agreement, the prevailing party shall have the right to recover its reasonable attorneys' fees and costs of suit from the other party.

(j) Consistency. The terms of this Agreement, the Note and the Security Documents supersede any inconsistent terms of Bank's construction loan commitment to Borrower, if any; provided, that all obligations of Borrower under the commitment to pay any fees to Bank or any costs and expenses relating to the Loan or the commitment shall survive the execution and delivery of this Agreement, the Note and the Security Documents. The terms of this Agreement supersede any inconsistent terms of the Note or the Security Documents.

(k) Third Party Consultants. If there is an Event of Default, and if reasonably required by Bank, Bank may hire such third-party consultants as it deems reasonably necessary, the costs of which shall be paid by Borrower, to provide the following services (a) review Plans and Specifications; (b) review the cost breakdown and the construction schedule; (c) conduct

compliance inspections with respect to the progress of construction of the Project and approve each element of a request for disbursement relating to Project costs; and (d) perform such other services contemplated by this Agreement as may, from time to time, be required by Bank.

(l) No Third Party Beneficiaries. This Agreement is made for the sole protection and benefit of Bank and Borrower and their successors and assigns. No trust fund is created by this Agreement and no other persons or entities will have any right of action under this Agreement or any right to the Loan funds.

(m) Relationship. Nothing herein shall be construed to constitute Bank and Borrower a partnership or joint venture, or Bank an agent of Borrower, it being agreed that the sole relationship between Bank and Borrower shall be that of lender and borrower.

(n) Governing Law. It is understood and agreed by the parties that this Agreement is made in the State of Nevada and that the laws of the State of Nevada shall govern the legality, validity, construction, interpretation and effect of this Agreement.

(o) Signs. Until the construction of the Improvements is complete, Bank may place reasonable signs on the Property during the term of the Loan stating that financing is being provided by Bank.

(p) Participations. Bank may grant participations in the Loan and the Note and Security Documents at any one time and may furnish any participant or prospective participant with all documents and information relating to Borrower and the Loan that Bank deems advisable in connection therewith. Borrower's indemnity obligations under this Agreement, the Note and the Security Documents shall also apply with respect to any participant and the directors, officers, agents and employees of any participant. Any fees or costs related to such participations shall not be borne by Borrower.

(q) Cure Periods. All cure periods provided for herein or in the Note, the Deed of Trust or the Security Documents shall run concurrently with any statutory cure periods.

(r) Jury Trial Waiver. Borrower and Bank hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of the Note, the Deed of Trust, this Agreement or the other Security Documents. This waiver is a knowing, intentional and voluntary waiver made by Borrower and Bank, and Borrower acknowledges that neither Bank nor any person acting on behalf of Bank has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Borrower and Bank acknowledge that this waiver is a material inducement to enter into a business relationship that each of them has already relied on this waiver and that each of them will continue to rely on this waiver.

(s) Waivers. To the extent permitted by law, Borrower hereby waives and relinquishes: (i) the defense of the statute of limitations in any action hereunder or in any action for the collection of any indebtedness or the performance of any obligation arising in connection with the Note; (ii) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons; (iii) demand, protest and notice of any kind; (iv) any defense based upon an election of remedies by Bank, including, without limitation, the marshaling of assets (or any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal); (v) any defense arising because of Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111 (b) of the Federal Bankruptcy Code; (vi) any defense based on any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code; (vii) any defense based upon an election of remedies by Bank, including, without limitation, any election to proceed by judicial or non-judicial foreclosure of any security, whether real property or personal property security, or by deed in lieu thereof, and whether or not every aspect of any foreclosure sale is commercially reasonable, or any election of remedies.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate as of the day and year first above written.

BORROWER:

CORONADO CANYONS, LLC, a Nevada limited-liability company

By: Kent Barry
Kent Barry, Manager

BANK:

COMMUNITY BANK OF NEVADA

By:	<u>Kent Barry</u>	<u>Rick A. Frank</u>
Name	<u>Kent Barry</u>	<u>Rick A. Frank</u>
Title:	<u>Manager</u>	<u>Vice President</u>

EXHIBIT "A"

Amount of Loan: \$29,020,000.00

Architect: _____

Contractor: Kitchell Contractors

Permitted Frequency of
Disbursement Requests: Monthly

Selected Construction
Control (if applicable) N/A

Required Completion Date: Maturity Date

Change Order Amount: \$10,000.00/\$25,000.00

Bank's Address: COMMUNITY BANK OF NEVADA
8945 West Russell Road, Suite #300
Las Vegas, Nevada 89148
Attention: Commercial Real Estate

Borrower's Address: CORONADO CANYONS, LLC
7900 West Sahara Avenue, Suite #200
Las Vegas, Nevada 89117
Attention: Manager

EXHIBIT "B-1"

Legal Description of Construction Parcel

PARCEL III:

A PORTION OF PARCEL A OF "THE MACDONALD RANCH CENTER", A COMMERCIAL SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 94, PAGE 76 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL A, SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HORIZON RIDGE PARKWAY (WIDTH VARIES);
THENCE DEPARTING SAID RIGHT-OF-WAY LINE AND ALONG THE EAST LINE OF SAID PARCEL A, SOUTH 00°47'25" WEST, A DISTANCE OF 149.67 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID EAST LINE, SOUTH 00°47'25" WEST, A DISTANCE OF 453.17 FEET;
THENCE DEPARTING SAID EAST LINE, NORTH 89°40'18" WEST, A DISTANCE OF 152.17 FEET;
THENCE SOUTH 45°19'42" WEST, A DISTANCE OF 226.27 FEET;
THENCE NORTH 89°40'18" WEST, A DISTANCE OF 461.15 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY, HAVING A RADIUS OF 42.00 FEET;
THENCE WESTERLY ALONG SAID CURVE TO THE RIGHT AN ARC DISTANCE OF 7.53 FEET, THROUGH A CENTRAL ANGLE OF 10°16'27";
THENCE NORTH 79°23'51" WEST, A DISTANCE OF 13.32 FEET;
THENCE NORTH 04°30'56" WEST, A DISTANCE OF 355.50 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 215.00 FEET;
THENCE NORTHERLY ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 36.35 FEET, THROUGH A CENTRAL ANGLE OF 09°41'17";
THENCE NORTH 05°10'21" EAST, A DISTANCE OF 18.26 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 46.00 FEET;
THENCE NORTHEASTERLY ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 38.66 FEET, THROUGH A CENTRAL ANGLE OF 48°09'15";
THENCE NORTH 53°19'36" EAST, A DISTANCE OF 228.38 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 36.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 17.21 FEET, THROUGH A CENTRAL ANGLE OF 27°23'18";
THENCE NORTH 80°42'54" EAST, A DISTANCE OF 136.02 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY, HAVING A RADIUS OF 115.00 FEET;
THENCE EASTERLY ALONG SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 19.30 FEET, THROUGH A CENTRAL ANGLE OF 09°36'50";
THENCE SOUTH 89°40'16" EAST, A DISTANCE OF 456.54 FEET TO A POINT ON THE EAST LINE OF SAID PARCEL A, SAID POINT ALSO BEING THE POINT OF BEGINNING.

OTHERWISE SHOWN AS LOT 1-J ON THAT RECORD OF SURVEY RECORDED IN FILE 131 OF SURVEYS, PAGE 65, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

PARCEL IV:

NON-EXCLUSIVE RECIPROCAL RIGHT, PRIVILEGE AND EASEMENT OVER, UPON AND ACROSS THE COMMON AREAS, COMMON PARKING AREAS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS RECORDED FEBRUARY 8, 2002 IN BOOK 20020208 AS DOCUMENT NO. 01983 AND RE-RECORDED APRIL 2, 2002 IN BOOK 20020402 AS DOCUMENT NO. 04821 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

EXHIBIT "B-2"

Legal Description of the Tesco Parcel

PARCEL I:

A PORTION OF PARCEL A OF "THE MACDONALD RANCH CENTER", A COMMERCIAL SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 94, PAGE 76 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL A, SAID POINT ALSO BEING A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF HORIZON RIDGE PARKWAY (WIDTH VARIES);

THENCE ALONG THE EAST LINE OF SAID PARCEL A, SOUTH 00°47'25" WEST, A DISTANCE OF 149.67 FEET;

THENCE DEPARTING SAID EAST LINE, NORTH 89°40'16" WEST, A DISTANCE OF 288.49 FEET;

THENCE NORTH 00°19'44" EAST, A DISTANCE OF 27.54 FEET;

THENCE NORTH 06°22'20" EAST, A DISTANCE OF 136.66 FEET;

THENCE NORTH 02°00'34" EAST, A DISTANCE OF 19.60 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HORIZON RIDGE PARKWAY, SAID POINT ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1229.40 FEET AND TO WHICH BEGINNING A RADIAL LINE BEARS NORTH 00°47'26" EAST;

THENCE EASTERLY ALONG SAID CURVE TO THE RIGHT AND SAID RIGHT-OF-WAY, AN ARC DISTANCE OF 277.34 FEET, THROUGH A CENTRAL ANGLE OF 12°55'31" TO THE POINT OF BEGINNING.

OTHERWISE SHOWN AS LOT 1-D OF THE RECORD OF SURVEY RECORDED IN FILE 131 OF SURVEYS, PAGE 65, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

PARCEL II:

A PORTION OF PARCEL A OF "THE MACDONALD RANCH CENTER", A COMMERCIAL SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 94, PAGE 76 OF PLATS, IN THE OFFICE OF THE COUNTY RECORDER, CLARK COUNTY, NEVADA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER (NW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF SAID SECTION 29, SAME BEING THE CENTERLINE INTERSECTION OF HORIZON RIDGE PARKWAY (WIDTH VARIES) AND GREEN VALLEY PARKWAY (WIDTH VARIES); THENCE ALONG THE NORTH LINE

OF SAID NORTHWEST QUARTER (NW ¼) COINCIDENT WITH THE CENTERLINE OF SAID HORIZON RIDGE PARKWAY, SOUTH 89°12'34" EAST, A DISTANCE OF 469.14 FEET;

THENCE DEPARTING SAID CENTERLINE, SOUTH 00°47'26" WEST, A DISTANCE OF 55.25 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HORIZON RIDGE PARKWAY, SAID POINT ALSO BEING THE POINT OF BEGINNING.

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, NORTH 84°47'00" EAST, A DISTANCE OF 50.17 FEET;

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, SOUTH 89°12'34" EAST, A DISTANCE OF 215.98 FEET;

THENCE DEPARTING SAID SOUTHERLY LINE, SOUTH 02°00'34" WEST, A DISTANCE OF 19.60 FEET;

THENCE SOUTH 06°22'20" WEST, A DISTANCE OF 136.66 FEET;

THENCE SOUTH 00°19'44" WEST, A DISTANCE OF 27.54 FEET;

THENCE NORTH 89°40'16" WEST, A DISTANCE OF 168.06 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 115.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 19.30 FEET, THROUGH A CENTRAL ANGLE OF 09°36'50";

THENCE SOUTH 80°42'54" WEST, A DISTANCE OF 67.25 FEET;

THENCE NORTH 01°06'42" EAST, A DISTANCE OF 192.78 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF SAID HORIZON RIDGE PARKWAY, SAID POINT ALSO BEING THE POINT OF BEGINNING.

OTHERWISE SHOWN AS LOT 1-E OF THAT RECORD OF SURVEY RECORDED IN FILE 131 OF SURVEYS, PAGE 65, OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

PARCEL IV:

NON-EXCLUSIVE RECIPROCAL RIGHT, PRIVILEGE AND EASEMENT OVER, UPON AND ACROSS THE COMMON AREAS, COMMON PARKING AREAS FOR VEHICULAR AND PEDESTRIAN INGRESS AND EGRESS AS SET FORTH IN THAT CERTAIN DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RESERVATION OF EASEMENTS RECORDED FEBRUARY 8, 2002 IN BOOK 20020208 AS DOCUMENT NO. 01983 AND RE-RECORDED APRIL 2, 2002 IN BOOK 20020402 AS DOCUMENT NO. 04821 OF OFFICIAL RECORDS, CLARK COUNTY, NEVADA.

EXHIBIT "C"

Cost Breakdown

EXHIBIT "D"

Request for Advance

(The Requests for Advance will be in the form required by the Voucher Control Department or the Construction Control Agent referenced in Section 4.2.)

EXHIBIT B

\$29,020,000.00

PROMISSORY NOTE
(Non-Revolving)

Las Vegas, Nevada
Made and effective as of
November 1, 2007

1. Principal Obligation and Interest.

CORONADO CANYONS, LLC, a Nevada limited-liability company ("**Borrower**"), unconditionally promises to pay to COMMUNITY BANK OF NEVADA ("**Bank**"), or order at its office located at 8945 West Russell Road, Suite #300, Las Vegas, Nevada 89148, or at such other place as the Bank may designate in writing, in currently available funds of the United States, the principal sum of TWENTY NINE MILLION TWENTY THOUSAND AND NO/100 DOLLARS (\$29,020,000.00), or so much as shall be advanced thereof, together with interest on the unpaid principal at the interest rate described below. Notwithstanding the foregoing, the Borrower acknowledges that the amount of the advances made under this Note will be subject to the limitations set forth in the Loan Agreement (defined below). The interest rate for this Note shall be calculated on the basis of a 365/360-day year. Whenever there is a default by Borrower under this Note, the interest rate on the unpaid principal balance shall, at the option of the Bank, be at the Default Rate (defined and set forth below). A condition precedent to the funding of the Note by the Bank is that the Borrower pays a non-refundable loan fee equal to \$435,300.00. Such fee will be deemed fully earned when paid.

2. Repayment.

(a) The total outstanding principal balance due under this Note, and all accrued and unpaid interest and other fees due hereunder, shall be due and payable in full on that date which is eighteen (18) months after the date of this Note ("**Maturity Date**"). Notwithstanding the foregoing, upon Borrower's written request to Bank, which must be received no earlier than thirty (30) days and no later than fifteen (15) days prior to the Maturity Date, Bank will (but only at its sole discretion) extend the Maturity Date by one six-month period upon satisfaction of the following conditions precedent: i) Borrower shall pay to Bank a non-refundable extension fee equal to one half of one percent (0.5%) of the face principal amount of this Note; ii) the Project (defined in the Loan Agreement) shall have been leased sufficiently, at no less than the "proforma" lease rates reflected in the appraisal for the Project provided by Borrower to Bank and under leases satisfactory to Bank as to form, content, and tenant), generates a Debt Service Coverage Ratio (defined in the Loan Agreement) of at least 1.0 to 1.0; and iii) there shall have been no Event of Default (defined below) and no occurrence or non-occurrence that with the passage of time or the giving of notice would constitute an Event of Default. The said extension fee will be deemed fully earned when paid.

(b) Borrower shall make monthly interest payments, commencing on the first day of the first calendar month after the month in which this Note is executed, and continuing on the first day of each successive calendar month thereafter.

(c) Interest under this Note will accrue at the "prime rate" of interest established by Bank from time to time, as published by Bank in its branches and elsewhere ("**Prime Rate**"), plus one percent (1.00%) per annum, fully floating and subject to change from time to time. The Prime Rate of interest is a base rate that Bank utilizes from time to time and which serves as the basis upon which effective rates of interest are calculated from time to time for those loans making reference thereto. The Prime Rate is not necessarily the lowest rate of interest or best rate of interest offered by the Bank. Each change in the interest rate hereunder shall become effective on the date on which the Prime Rate is published. Borrower acknowledges that the Bank may make loans based on indexes other than the Prime Rate.

(d) All payments received under this Note shall be applied first to the payment of all fees due hereunder, accrued interest and the balance shall be applied to principal. Borrower shall make payments required hereunder to the Bank's Office indicated in Section 1 above, or at a different place if required by the Bank.

3. Prepayment Provision.

There is no prepayment premium.

4. Security.

This Note is secured by a first position Deed of Trust and Security Agreement With Assignment of Rents and Fixture Filing of even date herewith ("**Deed of Trust**"), and is governed by the terms of a Construction Loan Agreement of even date herewith ("**Loan Agreement**"). As additional security for this Note, the Bank has a lien on, a continuing security interest in, and a right to set off at any time without notice against, all property and deposit accounts, if any, under the control of the Bank which belongs to Borrower or any other party to or guarantor of this Note.

5. Default and Acceleration.

The principal unpaid balance, plus accrued interest, shall, at the option of the Bank or any holder of this Note, become due and payable without notice or demand upon the happening of any one or more of the Events of Default defined in the Loan Agreement. In the event that any amount due under this Note is reduced to judgment, or if Borrower fails to make any payment provided for in this Note when due, after the expiration of all applicable cure periods, or if any of the other Events of Default described above shall occur and such Event of Default is not cured as allowed by the Loan Agreement, the Bank, or any holder of this Note, may, at its option declare

the unpaid balance of principal and the accrued unpaid interest due and payable although the time of maturity as expressed herein shall not have arrived, and, regardless whether the Bank so accelerates, the total of the unpaid balance of principal and the then accrued and unpaid interest shall then begin accruing interest at the rate stated in Section 2 above, plus five percent (5%) per annum ("**Default Rate**"), until such time as the Event of Default in question has been cured. At that time, the interest rate will revert to that rate provided in Section 2. Borrower acknowledges that the effect of this Default Rate provision could operate to compound some of the interest obligations due, and Borrower hereby expressly consents to such compounding should it occur and to the compounding of interest in general (to the full extent allowed by NRS Section 99.050). In addition to the Default Rate, and all other fees due hereunder, for each payment not made within fifteen (15) days of the due date therefor, Borrower will pay Bank a "late fee" equal to five percent (5%) of the payment due.

6. Attorneys' Fees and Costs.

Should the indebtedness represented by this Note, or any part hereof, be collected at law, in equity, or in any bankruptcy, receivership or other court proceeding, or an attorney be retained by the Bank for collection, Borrower agrees to pay, in addition to the principal and interest due hereon, all reasonable attorneys' fees, plus all other costs and expenses of collection and enforcement, including any fees incurred in connection with such proceedings or collection of this Note and/or enforcement of the Bank's rights with respect to the administration, supervision, preservation or protection of, or realization upon, any property securing payment hereof, whether or not an action is filed in connection therewith.

7. Costs.

Borrower agrees to pay all of Bank's "out of pocket" costs in connection with this Note including, without limitation, title fees, recording fees, reasonable attorney's fees, document fees, and other similar costs and fees.

8. Miscellaneous.

(a) The failure of the Bank to act or to exercise any right or remedy shall not in any way affect or impair the obligations of Borrower to the Bank, or constitute a waiver by the Bank of, or otherwise affect any of, the Bank's rights under this Note, under any endorsement or guaranty of this Note or under any document or instrument evidencing any security for payment of this Note.

(b) The invalidity or unenforceability of any one or more provisions of this Note shall in no way affect the other provisions.

(c) Borrower waives presentment, demand for payment, dishonor, notice of dishonor, protest, notice of protest, notice of nonpayment and any other notice or formality and any right of offset.

- (d) All titles used in this Note are intended solely for convenience and reference; said titles shall not affect any terms, provisions, or meanings of this Note.
- (e) No waiver or modification of any of the terms or provisions of this Note shall be valid or binding unless set forth in a writing signed by a duly authorized officer of the Bank, and then only to the extent therein specifically set forth.
- (f) All rights and remedies provided to the Bank or the holder of this Note shall be cumulative and shall be in addition to all other rights and remedies provided at law or in equity and all such rights and remedies may be exercised singly, successively and/or concurrently.
- (g) Time is of the essence hereof.
- (h) The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Note.
- (i) All notices given to or made upon Borrower shall be deemed to have been given or made when deposited in the U.S. Mail and addressed to Borrower at the address stated in the Deed of Trust.
- (j) All cure periods provided herein shall run concurrently with any applicable statutory cure periods.
- (k) Borrower and Bank hereby waive their respective rights to a trial by jury in any action or proceeding based upon, or related to, the subject matter of this Note, the Deed of Trust, the Loan Agreement or the other Security Documents (defined in the Loan Agreement). This waiver is a knowing, intentional and voluntary waiver made by Borrower and Bank, and Borrower acknowledges that neither Bank nor any person acting on behalf of Bank has made any representations of fact to induce this waiver of trial by jury or in any way to modify or nullify its effect. Borrower and Bank acknowledge that this waiver is a material inducement to enter into a business relationship, that each of them has already relied on this waiver and that each of them will continue to rely on this waiver.**
- (l) To the extent that any Borrower is determined by a court of competent jurisdiction to be a guarantor or surety hereunder, such party hereby waives and relinquishes all rights and remedies accorded by applicable law to guarantors and sureties generally and agrees not to assert or take advantage of any such rights or remedies, including, without limitation: (i) any right provided by Nevada Revised Statutes § 40.430, or any other statute or decision, to require Bank to proceed against Borrower or any other person or to proceed against or exhaust any security held by Bank at any time or to pursue any other remedy in Bank's power before proceeding against a guarantor or surety, or any right to require the marshaling of assets; (ii) any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other person or persons or the failure of Bank to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other person or persons; (iii) demand, protest and notice of any kind, including, without limitation, notice of the existence, creation or incurring of any new or

additional indebtedness or obligation or of any action or non-action on the part of Borrower, Bank, any endorser or creditor of Borrower or any guarantor or surety or on the part of any other person whomsoever under this or any other instrument in connection with any obligation or evidence of indebtedness held by Bank as collateral or in connection with any indebtedness hereby guaranteed; (iv) any defense based upon an election of remedies by Bank, including, without limitation, an election to proceed by non-judicial rather than judicial foreclosure, which may destroy or otherwise impair the subrogation rights of any guarantor or surety or the right of any guarantor or surety to proceed against Borrower for reimbursement, or both (or any defense based upon any statute or rule of law which provides that the obligation of a guarantor or surety must be neither larger in amount nor in other respects more burdensome than that of the principal).

9. Loan Agreement.

If there is any conflict between the terms of this Note and the Loan Agreement, the terms of the Loan Agreement will control.

IN WITNESS WHEREOF, this Note has been executed effective the date and place above written.

BORROWER:

CORONADO CANYONS, LLC, a Nevada limited-liability company

By:


Kent Barry, Manager

EXHIBIT C

SHEA & CARLYON, LTD.

A PROFESSIONAL CORPORATION

701 E. Bridger Avenue
Suite 850
Las Vegas, Nevada
89101-5700

Telephone (702) 471-7432
Facsimile (702) 471-7435

www.shcacarlyn.com

James Patrick Shea
Candace C. Carlyon
Shawn W. Miller

Shlomo S. Sherman
Tracy M. O'Steen
Lisa M. Wiltshire

Of Counsel:
Dawn M. Cica
Denise H. Abramow

March 30, 2009

VIA US MAIL AND HAND DELIVERY

Coronado Nevada, LLC
Jeffrey B. Guinn, Manager
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Monica A. Guinn, Guarantor
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117

Jeffrey B. Guinn, Guarantor
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117

Coronado Bay Investments, LLC, Guarantor
Jeffrey B. Guinn, Manager
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117

Jeffrey B. Guinn and Monica A. Guinn,
Trustees of the Del Mar Trust, Guarantor
7900 West Sahara Avenue, Suite 200
Las Vegas, NV 89117

Re: Coronado Nevada, LLC, Loan No. 9011020108 (the "Loan"); Coronado Bay Investments, LLC, the Del Mar Trust, Jeffrey B. Guinn, and Monica A. Guinn, Guarantors

This office represents Community Bank of Nevada (the "Bank") relative to the loan ("Loan") evidenced by Promissory Note No. 9011020108, dated December 27, 2006 (the "Note"), the Business Loan Agreement dated December 13, 2006 (the "Loan Agreement"), and other related loan documents executed in connection with the Loan (collectively, the "Loan Documents").

PLEASE TAKE NOTICE that the Loan is in default under the terms of the Loan Documents, in that you have failed to make payments due from and after January 13, 2009.

PLEASE TAKE FURTHER NOTICE that you are currently in default in payments due from and after January 13, 2009, in the amount of \$147,446.28.

PLEASE TAKE FURTHER NOTICE that the total amount due on the Loan as of March 26, 2009 is \$5,570,155.57 (excluding attorney's fees and costs), consisting of principal in the amount of \$5,441,181.71, accrued interest in the amount of \$124,187.54 and late fees of \$2,285.14. Interest charges at the default rate and attorneys' fees and costs, as well as any other applicable fees and charges, also continue to accrue on all of the obligations.

Shea & Carlyon, Ltd.

Coronado Nevada, LLC

March 30, 2009

Page 2 of 2

DEMAND IS HEREBY MADE for immediate payment of the sum of \$147,446.28. If that sum is not received within 10 days of the date of this letter, my client intends to take all appropriate action, which may include the commencement of a lawsuit against you or any of you, foreclosure on the collateral described in the Loan Documents (collectively, the "Collateral"), acceleration of all amounts due under the Loan as of the date of this correspondence, as well as the immediate enforcement of any and all remedies of the Bank under the Loan Documents.

DEMAND IS FURTHER MADE upon you to not dispose of any of the collateral and, if you fail to cure the default described above within ten days of the date of this letter, you immediately marshal and deliver possession of the Collateral to the Bank, including all related books and records, for inspection by the Bank and turnover to the Bank.

Nothing contained herein shall constitute a waiver of any right of the Bank under any law or the Note or other documents executed in connection with the Loan. The Bank expressly reserves any claims, defenses, rights and remedies under any of the documents described herein, at law, in equity or otherwise. The Bank also reserves the right to alter, amend or correct any of the information set forth herein.

Please contact me (or, if you retain counsel in regard to this matter, have your attorney contact me) immediately to avoid further action.

Sincerely,

SHEA & CARLYON, LTD.



Candace C. Carlyon, Esq.

CCC/lt

cc: Mr. Jerry Hayes, Community Bank of Nevada
Mr. John Dru, Community Bank of Nevada

EXHIBIT D



BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No	Call / Coll	Account	Officer	Initials
\$3,538,184.49	12-29-2008	06-27-2018	9011021572	3109	3109	VL	✓
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Borrower: Jeffrey B. Guinn
Monica A. Guinn
10125 ~~10117~~ Summit Canyon Drive
Las Vegas, NV 89144

Lender: Community Bank of Nevada
Commercial Lending
400 S. Fourth Street
Las Vegas, NV 89101

THIS BUSINESS LOAN AGREEMENT dated December 29, 2008, is made and executed between Jeffrey B. Guinn and Monica A. Guinn ("Borrower") and Community Bank of Nevada ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement. Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of December 29, 2008, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) Security Agreements granting to Lender security interests in the Collateral; (3) financing statements and all other documents perfecting Lender's Security Interests; (4) evidence of insurance as required below; (5) guaranties; (6) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any Indebtedness exists:

Business Activities. Jeffrey B. Guinn maintains an office at 10125 ~~10117~~ Summit Canyon Drive, Las Vegas, NV 89144. Unless Jeffrey B. Guinn has designated otherwise in writing, the principal office is the office at which Jeffrey B. Guinn keeps its books and records including its records concerning the Collateral. Jeffrey B. Guinn will notify Lender prior to any change in the location of Jeffrey B. Guinn's principal office address or any change in Jeffrey B. Guinn's name. Jeffrey B. Guinn shall do all things necessary to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Jeffrey B. Guinn and Jeffrey B. Guinn's business activities.

Monica A. Guinn maintains an office at 10125 ~~10117~~ Summit Canyon Drive, Las Vegas, NV 89144. Unless Monica A. Guinn has designated otherwise in writing, the principal office is the office at which Monica A. Guinn keeps its books and records including its records concerning the Collateral. Monica A. Guinn will notify Lender prior to any change in the location of Monica A. Guinn's principal office address or any change in Monica A. Guinn's name. Monica A. Guinn shall do all things necessary to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Monica A. Guinn and Monica A. Guinn's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents do not conflict with, result in a violation of, or constitute a default under (1) any provision of any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing

statement under any other name for at least the last five (5) years.

Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

Additional Requirements.

BORROWER'S FINANCIAL REQUIREMENTS:

(i) Financial Statements:

PERSONAL FINANCIAL STATEMENTS. Borrowers shall provide to Lender concurrently with the applicable tax return filing date personal financial statement.

TAX RETURNS. Borrowers shall provide to Lender, as soon as available, but in no event later than thirty (30) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns. If extensions are filed, copies of such extensions are to be provided immediately upon filing.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the



guarantors named below, on Lender's forms, and in the amounts and under the conditions set forth in those guaranties.

<u>Names of Guarantors</u>	<u>Amounts</u>
Del Mar Trust	Unlimited
Beach Trust	Unlimited

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits. Provided however, Borrower will not be required to pay and discharge any such assessment, tax, charge, levy, lien or claim so long as (1) the legality of the same shall be contested in good faith by appropriate proceedings, and (2) Borrower shall have established on Borrower's books adequate reserves with respect to such contested assessment, tax, charge, levy, lien, or claim in accordance with GAAP.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

RECOVERY OF ADDITIONAL COSTS. If the imposition of or any change in any law, rule, regulation or guideline, or the interpretation or application of any thereof by any court or administrative or governmental authority (including any request or policy not having the force of law) shall impose, modify or make applicable any taxes (except federal, state or local income or franchise taxes imposed on Lender), reserve requirements, capital adequacy requirements or other obligations which would (A) increase the cost to Lender for extending or maintaining the credit facilities to which this Agreement relates, (B) reduce the amounts payable to Lender under this Agreement or the Related Documents, or (C) reduce the rate of return on Lender's capital as a consequence of Lender's obligations with respect to the credit facilities to which this Agreement relates, then Borrower agrees to pay Lender such additional amounts as will compensate Lender therefor, within five (5) days after Lender's written demand for such payment, which demand shall be accompanied by an explanation of such imposition or charge and a calculation in reasonable detail of the additional amounts payable by Borrower, which explanation and calculations shall be conclusive in the absence of manifest error.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the Indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy;

or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with Lender; (B) Borrower or any Guarantor dies, becomes incompetent or becomes insolvent, files a petition in bankruptcy or similar proceedings, or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

EFFECT OF AN EVENT OF DEFAULT. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

ADDITIONAL REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants as follows: (i) the financial statement(s) provided to Lender in connection with Borrower's application/request for the loan governed by this document are true and accurate in all respects; (ii) all assets listed on such financial statement(s) are held in Borrower's own name, except as specifically disclosed therein, (iii) Borrower has specifically disclosed on such financial statement(s) whether any of the assets listed therein are held by a trust to which Borrower is a party (as a trustee, trustor, and/or beneficiary), and (if the assets are so held) Borrower has specifically identified such trust; and (iv) they have informed Lender of any and all trusts that holds any assets reflected on their financial statement(s). (Initial Here _____).

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any limitation whatsoever, to any one or more purchasers, or potential purchasers, any information or knowledge Lender may have about Borrower or about any other matter relating to the Loan, and Borrower hereby waives any rights to privacy Borrower may have with respect to such matters. Borrower additionally waives any and all notices of sale of participation interests, as well as all notices of any repurchase of such participation interests. Borrower also agrees that the purchasers of any such participation interests will be considered as the absolute owners of such interests in the Loan and will have all the rights granted under the participation agreement or agreements governing the sale of such participation interests. Borrower further waives all rights of offset or counterclaim that it may have now or later against Lender or against any purchaser of such a participation interest and unconditionally agrees that either Lender or such purchaser may enforce Borrower's obligation under the Loan irrespective of the failure or insolvency of any holder of any interest in the Loan. Borrower further agrees that the purchaser of any such participation interests may enforce its interests irrespective of any personal claims or defenses that Borrower may have against Lender.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Nevada without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Nevada.

Choice of Venue. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here *W. Guinn*)

Joint and Several Liability. All obligations of Borrower under this Agreement shall be joint and several, and all references to Borrower shall mean each and every Borrower. This means that each Borrower signing below is responsible for all obligations in this Agreement.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Borrower, or between Lender and any Grantor, shall constitute a waiver of any of Lender's rights or of any of Borrower's or any Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Borrower agrees to keep Lender informed at all times of Borrower's current address. Unless otherwise provided or required by law, if there is more than one Borrower, any notice given by Lender to any Borrower is deemed to be notice given to all Borrowers.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any person or circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other person or circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. All covenants and agreements by or on behalf of Borrower contained in this Agreement or any Related Documents shall bind Borrower's successors and assigns and shall inure to the benefit of Lender and its successors and assigns. Borrower shall not, however, have the right to assign Borrower's rights under this Agreement or any interest therein, without the prior written consent of Lender.

Survival of Representations and Warranties. Borrower understands and agrees that in making the Loan, Lender is relying on all representations, warranties, and covenants made by Borrower in this Agreement or in any certificate or other instrument delivered by Borrower to Lender under this Agreement or the Related Documents. Borrower further agrees that regardless of any investigation made by Lender, all such representations, warranties and covenants will survive the making of the Loan and delivery to Lender of the Related Documents, shall be continuing in nature, and shall remain in full force and effect until such time as Borrower's indebtedness shall be paid in full, or until this Agreement shall be terminated in the manner provided above, whichever is the last to occur.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

Waive Jury. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code. Accounting words and terms not otherwise defined in this Agreement shall have the meanings assigned to them in accordance with generally accepted accounting principles as in effect on the date of this Agreement:

Advance. The word "Advance" means a disbursement of Loan funds made, or to be made, to Borrower or on Borrower's behalf on a line of credit or multiple advance basis under the terms and conditions of this Agreement.

Agreement. The word "Agreement" means this Business Loan Agreement, as this Business Loan Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Business Loan Agreement from time to time.

Borrower. The word "Borrower" means Jeffrey B. Guinn and Monica A. Guinn and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Collateral. The word "Collateral" means all property and assets granted as collateral security for a Loan, whether real or personal property, whether granted directly or indirectly, whether granted now or in the future, and whether granted in the form of a security interest, mortgage, collateral mortgage, deed of trust, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien, charge, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever, whether created by law, contract, or otherwise.

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., Chapters 6.5 through 7.7 of Division 20 of the California Health and Safety Code, Section 25100, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means Community Bank of Nevada, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the promissory note dated June 27, 2008, in the original principal amount of \$2,939,034.90, now increased to \$3,538,184.49 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the promissory note or agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED DECEMBER 29, 2008.

BORROWER:

X

Jeffrey B. Guinn

X

Monica A. Guinn

LENDER:

COMMUNITY BANK OF NEVADA

By:

Vincent Lopez, Vice President

EXHIBIT E



BUSINESS LOAN AGREEMENT

Principal	Loan Date	Maturity	Loan No.	Call / Coll	Account	Officer	Initials
\$600,000.00	09-26-2007	09-26-2008	9011018964		4614	VL	JK

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "****" has been omitted due to text length limitations.

Borrower: Jeffrey B. Guinn
Monica A. Guinn
10117 Summit Canyon Dr.
Las Vegas, NV 89144

Lender: Community Bank of Nevada
Commercial Lending
400 S. Fourth Street
Las Vegas, NV 89101

THIS BUSINESS LOAN AGREEMENT dated September 26, 2007, is made and executed between Jeffrey B. Guinn and Monica A. Guinn ("Borrower") and Community Bank of Nevada ("Lender") on the following terms and conditions. Borrower has received prior commercial loans from Lender or has applied to Lender for a commercial loan or loans or other financial accommodations, including those which may be described on any exhibit or schedule attached to this Agreement ("Loan"). Borrower understands and agrees that: (A) in granting, renewing, or extending any Loan, Lender is relying upon Borrower's representations, warranties, and agreements as set forth in this Agreement; (B) the granting, renewing, or extending of any Loan by Lender at all times shall be subject to Lender's sole judgment and discretion; and (C) all such Loans shall be and remain subject to the terms and conditions of this Agreement.

TERM. This Agreement shall be effective as of September 26, 2007, and shall continue in full force and effect until such time as all of Borrower's Loans in favor of Lender have been paid in full, including principal, interest, costs, expenses, attorneys' fees, and other fees and charges, or until such time as the parties may agree in writing to terminate this Agreement.

CONDITIONS PRECEDENT TO EACH ADVANCE. Lender's obligation to make the initial Advance and each subsequent Advance under this Agreement shall be subject to the fulfillment to Lender's satisfaction of all of the conditions set forth in this Agreement and in the Related Documents.

Loan Documents. Borrower shall provide to Lender the following documents for the Loan: (1) the Note; (2) guaranties; (3) together with all such Related Documents as Lender may require for the Loan; all in form and substance satisfactory to Lender and Lender's counsel.

Payment of Fees and Expenses. Borrower shall have paid to Lender all fees, charges, and other expenses which are then due and payable as specified in this Agreement or any Related Document.

Representations and Warranties. The representations and warranties set forth in this Agreement, in the Related Documents, and in any document or certificate delivered to Lender under this Agreement are true and correct.

No Event of Default. There shall not exist at the time of any Advance a condition which would constitute an Event of Default under this Agreement or under any Related Document.

REPRESENTATIONS AND WARRANTIES. Borrower represents and warrants to Lender, as of the date of this Agreement, as of the date of each disbursement of loan proceeds, as of the date of any renewal, extension or modification of any Loan, and at all times any indebtedness exists:

Organization. Jeffrey B. Guinn maintains an office at 10117 Summit Canyon Dr., Las Vegas, NV 89144. Unless Jeffrey B. Guinn has designated otherwise in writing, the principal office is the office at which Jeffrey B. Guinn keeps its books and records including its records concerning the Collateral. Jeffrey B. Guinn will notify Lender prior to any change in the location of Jeffrey B. Guinn's principal office address or any change in Jeffrey B. Guinn's name. Jeffrey B. Guinn shall do all things necessary to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Jeffrey B. Guinn and Jeffrey B. Guinn's business activities.

Monica A. Guinn maintains an office at 10117 Summit Canyon Dr., Las Vegas, NV 89144. Unless Monica A. Guinn has designated otherwise in writing, the principal office is the office at which Monica A. Guinn keeps its books and records including its records concerning the Collateral. Monica A. Guinn will notify Lender prior to any change in the location of Monica A. Guinn's principal office address or any change in Monica A. Guinn's name. Monica A. Guinn shall do all things necessary to comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to Monica A. Guinn and Monica A. Guinn's business activities.

Assumed Business Names. Borrower has filed or recorded all documents or filings required by law relating to all assumed business names used by Borrower. Excluding the name of Borrower, the following is a complete list of all assumed business names under which Borrower does business: None.

Authorization. Borrower's execution, delivery, and performance of this Agreement and all the Related Documents have been duly authorized by all necessary action by Borrower and do not conflict with, result in a violation of, or constitute a default under (1) any provision of any agreement or other instrument binding upon Borrower or (2) any law, governmental regulation, court decree, or order applicable to Borrower or to Borrower's properties.

Financial Information. Each of Borrower's financial statements supplied to Lender truly and completely disclosed Borrower's financial condition as of the date of the statement, and there has been no material adverse change in Borrower's financial condition subsequent to the date of the most recent financial statement supplied to Lender. Borrower has no material contingent obligations except as disclosed in such financial statements.

Legal Effect. This Agreement constitutes, and any instrument or agreement Borrower is required to give under this Agreement when delivered will constitute legal, valid, and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

Properties. Except as contemplated by this Agreement or as previously disclosed in Borrower's financial statements or in writing to Lender and as accepted by Lender, and except for property tax liens for taxes not presently due and payable, Borrower owns and has good title to all of Borrower's properties free and clear of all Security Interests, and has not executed any security documents or financing statements relating to such properties. All of Borrower's properties are titled in Borrower's legal name, and Borrower has not used or filed a financing statement under any other name for at least the last five (5) years.

**BUSINESS LOAN AGREEMENT
(Continued)**

Loan No: 9011018964

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Hazardous Substances. Except as disclosed to and acknowledged by Lender in writing, Borrower represents and warrants that: (1) During the period of Borrower's ownership of the Collateral, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from any of the Collateral. (2) Borrower has no knowledge of, or reason to believe that there has been (a) any breach or violation of any Environmental Laws; (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Collateral by any prior owners or occupants of any of the Collateral; or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters. (3) Neither Borrower nor any tenant, contractor, agent or other authorized user of any of the Collateral shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from any of the Collateral; and any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including without limitation all Environmental Laws. Borrower authorizes Lender and its agents to enter upon the Collateral to make such inspections and tests as Lender may deem appropriate to determine compliance of the Collateral with this section of the Agreement. Any inspections or tests made by Lender shall be at Borrower's expense and for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Borrower or to any other person. The representations and warranties contained herein are based on Borrower's due diligence in investigating the Collateral for hazardous waste and Hazardous Substances. Borrower hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Borrower becomes liable for cleanup or other costs under any such laws, and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Agreement or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release of a hazardous waste or substance on the Collateral. The provisions of this section of the Agreement, including the obligation to indemnify, shall survive the payment of the indebtedness and the termination, expiration or satisfaction of this Agreement and shall not be affected by Lender's acquisition of any interest in any of the Collateral, whether by foreclosure or otherwise.

Litigation and Claims. No litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Borrower is pending or threatened, and no other event has occurred which may materially adversely affect Borrower's financial condition or properties, other than litigation, claims, or other events, if any, that have been disclosed to and acknowledged by Lender in writing.

Taxes. To the best of Borrower's knowledge, all of Borrower's tax returns and reports that are or were required to be filed, have been filed, and all taxes, assessments and other governmental charges have been paid in full, except those presently being or to be contested by Borrower in good faith in the ordinary course of business and for which adequate reserves have been provided.

Lien Priority. Unless otherwise previously disclosed to Lender in writing, Borrower has not entered into or granted any Security Agreements, or permitted the filing or attachment of any Security Interests on or affecting any of the Collateral directly or indirectly securing repayment of Borrower's Loan and Note, that would be prior or that may in any way be superior to Lender's Security Interests and rights in and to such Collateral.

Binding Effect. This Agreement, the Note, all Security Agreements (if any), and all Related Documents are binding upon the signers thereof, as well as upon their successors, representatives and assigns, and are legally enforceable in accordance with their respective terms.

AFFIRMATIVE COVENANTS. Borrower covenants and agrees with Lender that, so long as this Agreement remains in effect, Borrower will:

Notices of Claims and Litigation. Promptly inform Lender in writing of (1) all material adverse changes in Borrower's financial condition, and (2) all existing and all threatened litigation, claims, investigations, administrative proceedings or similar actions affecting Borrower or any Guarantor which could materially affect the financial condition of Borrower or the financial condition of any Guarantor.

Financial Records. Maintain its books and records in accordance with GAAP, applied on a consistent basis, and permit Lender to examine and audit Borrower's books and records at all reasonable times.

Financial Statements. Furnish Lender with the following:

Additional Requirements.

BORROWER'S FINANCIAL REQUIREMENTS:

(I) Financial Statements:

PERSONAL FINANCIAL STATEMENTS. Borrower shall provide to Lender, as soon as available, but in no event later than sixty (60) days after the end of each calendar year, a self-prepared personal financial statement.

TAX RETURNS. Borrower shall provide to Lender, as soon as available, but in no event later than sixty (60) days after the applicable filing date for the tax reporting period ended, Federal and other governmental tax returns. If extensions are filed, copies of such extensions are to be provided immediately upon filing.

All financial reports required to be provided under this Agreement shall be prepared in accordance with GAAP, applied on a consistent basis, and certified by Borrower as being true and correct.

Additional Information. Furnish such additional information and statements, as Lender may request from time to time.

Insurance. Maintain fire and other risk insurance, public liability insurance, and such other insurance as Lender may require with respect to Borrower's properties and operations, in form, amounts, coverages and with insurance companies acceptable to Lender. Borrower, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days prior written notice to Lender. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Borrower or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest for the Loans, Borrower will provide Lender with such lender's loss payable or other endorsements as Lender may require.

Insurance Reports. Furnish to Lender, upon request of Lender, reports on each existing insurance policy showing such information as Lender may reasonably request, including without limitation the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the properties insured; (5) the then current property values on the basis of which insurance has been obtained, and the manner of determining those values; and (6) the expiration date of the policy. In addition, upon request of Lender (however not more often than annually), Borrower will have an independent appraiser satisfactory to Lender determine, as applicable, the actual cash value or replacement cost of any Collateral. The cost of such appraisal shall be paid by Borrower.

Guaranties. Prior to disbursement of any Loan proceeds, furnish executed guaranties of the Loans in favor of Lender, executed by the guarantor named below, on Lender's forms, and in the amount and under the conditions set forth in those guaranties.

**BUSINESS LOAN AGREEMENT
(Continued)**

Loan No: 9011018964

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Name of Guarantor

Amount

Del Mar Trust

Unlimited

Other Agreements. Comply with all terms and conditions of all other agreements, whether now or hereafter existing, between Borrower and any other party and notify Lender immediately in writing of any default in connection with any other such agreements.

Loan Proceeds. Use all Loan proceeds solely for Borrower's business operations, unless specifically consented to the contrary by Lender in writing.

Taxes, Charges and Liens. Pay and discharge when due all of its indebtedness and obligations, including without limitation all assessments, taxes, governmental charges, levies and liens, of every kind and nature, imposed upon Borrower or its properties, income, or profits, prior to the date on which penalties would attach, and all lawful claims that, if unpaid, might become a lien or charge upon any of Borrower's properties, income, or profits.

Performance. Perform and comply, in a timely manner, with all terms, conditions, and provisions set forth in this Agreement, in the Related Documents, and in all other instruments and agreements between Borrower and Lender. Borrower shall notify Lender immediately in writing of any default in connection with any agreement.

Operations. Maintain executive and management personnel with substantially the same qualifications and experience as the present executive and management personnel; provide written notice to Lender of any change in executive and management personnel; conduct its business affairs in a reasonable and prudent manner.

Environmental Studies. Promptly conduct and complete, at Borrower's expense, all such investigations, studies, samplings and testings as may be requested by Lender or any governmental authority relative to any substance, or any waste or by-product of any substance defined as toxic or a hazardous substance under applicable federal, state, or local law, rule, regulation, order or directive, at or affecting any property or any facility owned, leased or used by Borrower.

Compliance with Governmental Requirements. Comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the conduct of Borrower's properties, businesses and operations, and to the use or occupancy of the Collateral, including without limitation, the Americans With Disabilities Act. Borrower may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Borrower has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Collateral are not jeopardized. Lender may require Borrower to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Inspection. Permit employees or agents of Lender at any reasonable time to inspect any and all Collateral for the Loan or Loans and Borrower's other properties and to examine or audit Borrower's books, accounts, and records and to make copies and memoranda of Borrower's books, accounts, and records. If Borrower now or at any time hereafter maintains any records (including without limitation computer generated records and computer software programs for the generation of such records) in the possession of a third party, Borrower, upon request of Lender, shall notify such party to permit Lender free access to such records at all reasonable times and to provide Lender with copies of any records it may request, all at Borrower's expense.

Compliance Certificates. Unless waived in writing by Lender, provide Lender at least annually, with a certificate executed by Borrower's chief financial officer, or other officer or person acceptable to Lender, certifying that the representations and warranties set forth in this Agreement are true and correct as of the date of the certificate and further certifying that, as of the date of the certificate, no Event of Default exists under this Agreement.

Environmental Compliance and Reports. Borrower shall comply in all respects with any and all Environmental Laws; not cause or permit to exist, as a result of an intentional or unintentional action or omission on Borrower's part or on the part of any third party, on property owned and/or occupied by Borrower, any environmental activity where damage may result to the environment, unless such environmental activity is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state or local governmental authorities; shall furnish to Lender promptly and in any event within thirty (30) days after receipt thereof a copy of any notice, summons, lien, citation, directive, letter or other communication from any governmental agency or instrumentality concerning any intentional or unintentional action or omission on Borrower's part in connection with any environmental activity whether or not there is damage to the environment and/or other natural resources.

Additional Assurances. Make, execute and deliver to Lender such promissory notes, mortgages, deeds of trust, security agreements, assignments, financing statements, instruments, documents and other agreements as Lender or its attorneys may reasonably request to evidence and secure the Loans and to perfect all Security Interests.

RECOVERY OF ADDITIONAL COSTS. If the imposition of or any change in any law, rule, regulation or guideline, or the interpretation or application of any thereof by any court or administrative or governmental authority (including any request or policy not having the force of law) shall impose, modify or make applicable any taxes (except federal, state or local income or franchise taxes imposed on Lender), reserve requirements, capital adequacy requirements or other obligations which would (A) increase the cost to Lender for extending or maintaining the credit facilities to which this Agreement relates, (B) reduce the amounts payable to Lender under this Agreement or the Related Documents, or (C) reduce the rate of return on Lender's capital as a consequence of Lender's obligations with respect to the credit facilities to which this Agreement relates, then Borrower agrees to pay Lender such additional amounts as will compensate Lender therefor, within five (5) days after Lender's written demand for such payment, which demand shall be accompanied by an explanation of such imposition or charge and a calculation in reasonable detail of the additional amounts payable by Borrower, which explanation and calculations shall be conclusive in the absence of manifest error.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Borrower fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Borrower's failure to discharge or pay when due any amounts Borrower is required to discharge or pay under this Agreement or any Related Documents, Lender on Borrower's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on any Collateral and paying all costs for insuring, maintaining and preserving any Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Borrower. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity.

CESSATION OF ADVANCES. If Lender has made any commitment to make any Loan to Borrower, whether under this Agreement or under any other agreement, Lender shall have no obligation to make Loan Advances or to disburse Loan proceeds if: (A) Borrower or any Guarantor is in default under the terms of this Agreement or any of the Related Documents or any other agreement that Borrower or any Guarantor has with

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or is adjudged a bankrupt; (C) there occurs a material adverse change in Borrower's financial condition, in the financial condition of any Guarantor, or in the value of any Collateral securing any Loan; or (D) any Guarantor seeks, claims or otherwise attempts to limit, modify or revoke such Guarantor's guaranty of the Loan or any other loan with Lender; or (E) Lender in good faith deems itself insecure, even though no Event of Default shall have occurred.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Borrower fails to make any payment when due under the Loan.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The death of Borrower or the dissolution or termination of Borrower's existence as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the Loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of the Loan is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default on Indebtedness, is curable and if Borrower or Grantor, as the case may be, has not been given a notice of a similar default within the preceding twelve (12) months, it may be cured if Borrower or Grantor, as the case may be, after receiving written notice from Lender demanding cure of such default: (1) cure the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiate steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continue and complete all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

EFFECT OF AN EVENT OF DEFAULT. If any Event of Default shall occur, except where otherwise provided in this Agreement or the Related Documents, all commitments and obligations of Lender under this Agreement or the Related Documents or any other agreement immediately will terminate (including any obligation to make further Loan Advances or disbursements), and, at Lender's option, all Indebtedness immediately will become due and payable, all without notice of any kind to Borrower, except that in the case of an Event of Default of the type described in the "Insolvency" subsection above, such acceleration shall be automatic and not optional. In addition, Lender shall have all the rights and remedies provided in the Related Documents or available at law, in equity, or otherwise. Except as may be prohibited by applicable law, all of Lender's rights and remedies shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Borrower or of any Grantor shall not affect Lender's right to declare a default and to exercise its rights and remedies.

ADDITIONAL REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants as follows: (i) the financial statement(s) provided to Lender in connection with Borrower's application/request for the loan governed by this document are true and accurate in all respects; (ii) all assets listed on such financial statement(s) are held in Borrower's own name, except as specifically disclosed therein, (iii) Borrower has specifically disclosed on such financial statement(s) whether any of the assets listed therein are held by a trust to which Borrower is a party (as a trustee, trustor, and/or beneficiary), and (if the assets are so held) Borrower has specifically identified such trust; and (iv) they have informed Lender of any and all trusts that holds any assets reflected on their financial statement(s). (Initial Here max).

30 DAY OUT OF DEBT REQUIREMENT. Principal balance shall remain at zero (\$0.00) for 30 consecutive days at any time during the term of this loan.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Attorneys' Fees; Expenses. Borrower agrees to pay upon demand all of Lender's costs and expenses, including Lender's attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay someone else to help enforce this Agreement, and Borrower shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrower also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Consent to Loan Participation. Borrower agrees and consents to Lender's sale or transfer, whether now or later, of one or more participation interests in the Loan to one or more purchasers, whether related or unrelated to Lender. Lender may provide, without any

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Choice of Venue. If there is a lawsuit, Borrower agrees upon Lender's request to submit to the jurisdiction of the courts of Clark County, State of Nevada. (Initial Here)

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment including, but not limited to, the following:

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Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement.

GAAP. The word "GAAP" means generally accepted accounting principles.

Grantor. The word "Grantor" means each and all of the persons or entities granting a Security Interest in any Collateral for the Loan, including without limitation all Borrowers granting such a Security Interest.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Loan.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Borrower is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means Community Bank of Nevada, its successors and assigns.

Loan. The word "Loan" means any and all loans and financial accommodations from Lender to Borrower whether now or hereafter existing, and however evidenced, including without limitation those loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

Note. The word "Note" means the promissory note dated September 26, 2005, in the original principal amount of \$600,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of and substitutions for the promissory note or agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Loan.

Security Agreement. The words "Security Agreement" mean and include without limitation any agreements, promises, covenants, arrangements, understandings or other agreements, whether created by law, contract, or otherwise, evidencing, governing, representing, or creating a Security Interest.

Security Interest. The words "Security Interest" mean, without limitation, any and all types of collateral security, present and future, whether in the form of a lien, charge, encumbrance, mortgage, deed of trust, security deed, assignment, pledge, crop pledge, chattel mortgage, collateral chattel mortgage, chattel trust, factor's lien, equipment trust, conditional sale, trust receipt, lien or title retention contract, lease or consignment intended as a security device, or any other security or lien interest whatsoever whether created by law, contract, or otherwise.

BORROWER ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS BUSINESS LOAN AGREEMENT AND BORROWER AGREES TO ITS TERMS. THIS BUSINESS LOAN AGREEMENT IS DATED SEPTEMBER 26, 2007.

BORROWER:

X

Jeffrey B. Guinn

X

Monica A. Guinn

LENDER:

COMMUNITY BANK OF NEVADA

By:

Vincent Lopez, Vice President