

Loan No.: Peck 1

First Property Address: 161 Kahle Drive, Stateline, NV 89449

DOUGLAS COUNTY, NV

2023-999283

Rec:\$40.00

\$40.00 Pgs=43

08/07/2023 01:17 PM

FIRST CENTENNIAL - RENO (MAIN OFFICE)

SHAWNYNE GARREN, RECORDER

RECORDING REQUESTED BY:

First Centennial Title Company of Nevada

896 W. Nye Ln #104
Carson City, NV 89703

Escrow: 23036354-DC

AND WHEN RECORDED MAIL TO:

Western Highland Fund II, LLC
3170 US Highway 50, Suite 10
So. Lake Tahoe, CA 96150

Loan Number: Peck 1

APN/Tax Id(s): 1318-22-002-044

**DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES
AND RENTS AND FIXTURE FINANCING STATEMENT**

Note Amount: \$450,000.00 Property Address(es): 161 Kahle Drive, Stateline, NV 89449

THIS DOCUMENT DOES NOT CONTAIN ANY PERSONAL INFORMATION (AS DEFINED IN NEVADA REVISED STATUTES (as amended, "NRS") SECTION 603A.040) IN VIOLATION OF NRS SECTION 239B.030.

THIS DOCUMENT CONSTITUTES A FIXTURE FILING IN ACCORDANCE WITH
THE NEVADA COMMERCIAL CODE

This Deed of Trust, Security Agreement and Fixture Filing (with Assignment of Rents and Leases) ("Security Instrument") is made as of 8-3-2023 between, **161 Kahle Drive LLC, a Nevada Domestic Limited Liability Company**, trustor(s), herein collectively called "**Borrower**," whose address is 5675 Meacham Street, Washoe Valley, NV 89704 and **Western Highland Fund II, LLC, a Nevada limited liability company**, beneficiary(ies), herein collectively called "**Lender**," whose address is 3170 US Highway 50, Suite 10, South Lake Tahoe, CA 96150 and First Centennial Title Company, herein called "**Trustee**."

Borrower, in consideration of (i) the loan in the original principal amount of **\$450,000.00** (the "**Mortgage Loan**") evidenced by that certain Promissory Note dated as 8-3-2023, executed by Borrower and made payable to the order of Lender (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the "**Note**"), (ii) that certain Loan and Security Agreement dated as of the date of this Security Instrument, executed by and between Borrower and Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the "**Loan Agreement**"), and (iii) the trust created by this Security Instrument, and to secure to Lender the repayment of the Indebtedness (as defined in this Security Instrument), and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents (as defined in the Loan Agreement), excluding any Environmental Indemnity Agreement (as defined in this Security Instrument), irrevocably and unconditionally mortgages, grants, warrants, conveys, bargains, sells, and assigns to Trustee, in trust, for benefit of Lender, with power of sale and right of entry and possession, the Mortgaged Property (as defined in this Security Instrument), including the real property located at **161 Kahle Drive, Stateline, NV 89449** and described in Exhibit A attached to this Security Instrument and incorporated by reference (the "**Land**"), to have and to hold such Mortgaged Property unto Trustee and Trustee's successors and assigns, forever; Borrower hereby releasing, relinquishing, and waiving, to the fullest extent allowed by law, all rights and benefits, if any, under and by virtue of the homestead exemption laws of the Property Jurisdiction, if applicable.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to mortgage, grant, warrant, convey, bargain, sell, and assign the Mortgaged Property, and that the Mortgaged Property is not encumbered by any Lien (as defined in this Security Instrument) other than Permitted Encumbrances (as defined in this Security Instrument). Borrower covenants that Borrower will warrant and defend the title to the Mortgaged Property against all claims and demands other than Permitted Encumbrances.

Borrower, and by their acceptance hereof, each of Trustee and Lender covenants and agrees as follows:

1. Defined Terms.

Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement. All terms used and not specifically defined herein, but which are otherwise defined by the UCC, shall have the meanings assigned to them by the UCC. The following terms, when used in this Security Instrument, shall have the following meanings:

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy” as now and hereafter in effect, or any successor statute.

“**Collateral Account**” means any account designated as such by Lender pursuant to a Collateral Agreement or as established pursuant to the Loan Agreement, including any impound account, property reserves, debt coverage reserves and other reserves and impounds.

“**Collateral Account Funds**” means, collectively, the funds on deposit in any Collateral Account.

“**Collateral Agreement**” means any separate agreement between Borrower and Lender and any other party (if applicable) for the establishment of any other fund, reserve or account related to the Mortgage Loan or the Mortgaged Property.

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“**Default Rate**” means an interest rate defined in the Note.

“**Enforcement Costs**” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under the Loan Agreement or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of the Loan Agreement or any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding or Foreclosure Event) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

“**Environmental Indemnity Agreement**” means that certain Environmental Indemnity Agreement dated as of the date of this Security Instrument, executed by Borrower to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Environmental Laws**” has the meaning set forth in the Environmental Indemnity Agreement.

“**Event of Default**” means the breach or non-performance, when due, of any obligation of the Note, Loan Agreement or this Security Instrument or the breach of any covenant, representation of warranty in the Note, Loan Agreement or this Security Agreement, including but not limited to:

- (a) If any payment under the Note is not paid within any grace period in the Note, or if any other monetary or non-monetary obligation of Borrower to Lender the Note, this Security Instrument or the Loan Agreement is not paid or performed within the due date and any specified grace period;
- (b) If any of the Impositions is not paid before it becomes delinquent;

- (c) If the Policies are not kept in good standing;
- (d) If Borrower does not comply with the provisions of Paragraph 12 of this Security Instrument;
- (e) If any representation or warranty of Borrower, or of any person guaranteeing or otherwise liable for payment of the Indebtedness (a "Guarantor") or in any such Guaranty, or in any certificate, report, financial statement or other instrument furnished in connection with the making of the Note, this Security Instrument, the Loan Agreement or any such Guaranty, shall be false or misleading in any material respect and the inaccuracy is not cured to the reasonable satisfaction of Lender, within fifteen (15) days after written notice from Lender to Borrower provided, however, that if the default is of a kind that it cannot be cured within 15 days, then Borrower shall not be in default if Borrower commences curing the default within a reasonable time and diligently completes the cure within a reasonable time, but not more than 60 days after the date of the original written notice;
- (f) If Borrower or any Guarantor makes an assignment for the benefit of creditors;
- (g) If a receiver, liquidator or trustee of Borrower or of any Guarantor shall be appointed or if Borrower or any Guarantor is adjudicated a bankrupt or insolvent, or if any petition for bankruptcy, reorganization or arrangement pursuant to federal bankruptcy law, or any similar federal or state law, is filed by or against Borrower or any Guarantor, or if any proceeding for the dissolution or liquidation of Borrower or of any Guarantor is instituted and, if such appointment, adjudication, petition or proceeding was involuntary, if it is not discharged, stayed or dismissed within thirty (30) days or if Borrower is generally not paying its debts as they become due;
- (h) If Borrower defaults under any other mortgage, deed of trust or security agreement covering any part of the Mortgaged Property whether it be superior or inferior to the lien of this Security Instrument, and if such default is not cured within any applicable cure or grace period;
- (i) If the Mortgaged Property is subjected (i) to any lien which is superior to the lien of this Security Instrument such as a Property Assessed Clean Energy ("PACE"), Home Energy Renovation Opportunity ("HERO") obligation, loans, liens or assessments, other than a lien for ordinary local real estate taxes and assessments not yet delinquent and any Permitted Encumbrances, or (ii) to any mechanic's, materialmen's, construction, or other lien which is superior to the lien of this Security Instrument and such lien remains undischarged for thirty (30) days;
- (j) If this Security Instrument is junior to one or more existing encumbrances of record, if Borrower fails to provide Lender, upon request satisfactory evidence that all senior encumbrances are current; or
- (k) If Borrower is a natural person and the Mortgage Property is residential, occupancy of the Mortgaged Property unless designated as owner-occupied in the loan application.
- (l) If an Appraisal Default, as defined in the Loan Agreement, occurs.

"Fixtures" means all Goods that are so attached or affixed to the Land or the Improvements as to constitute a fixture under the laws of the Property Jurisdiction.

"Foreclosure Event" means:

- (a) foreclosure under the Security Instrument;
- (b) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which Lender (or its designee or nominee) or a third party purchaser becomes owner of the Mortgaged Property; or,
- (c) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower's interest in the Mortgaged Property in lieu of any of the foregoing.

"Goods" means all of Borrower's present and hereafter acquired right, title and interest in all goods which are used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings;

machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

“Governmental Authority” means any court, board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any court, board, commission, department or body of any municipal, county, state or federal governmental unit, that has or acquires jurisdiction over Borrower or the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

“Guaranteed Interest” shall have the meaning set forth in the Note.

“Imposition Deposits” means deposits in an amount sufficient to accumulate with Lender the entire sum required to pay the Impositions when due.

“Impositions” means

- (a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property;
- (b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Lender may require under the Loan Agreement;
- (c) Taxes; and
- (d) amounts for other charges and expenses assessed against the Mortgaged Property which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably determined from time to time by Lender.

“Improvements” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities, and additions and other construction on the Land.

“Indebtedness” means the principal of, interest on, and all other amounts due at any time under the Note, the Loan Agreement, this Security Instrument or any other Loan Document (other than the Environmental Indemnity Agreement and any Guaranty), including Prepayment Premiums, Guaranteed Interest, late charges, interest charged at the Default Rate, and accrued interest as provided in the Loan Agreement and this Security Instrument, advances, costs and expenses to perform the obligations of Borrower or to protect the Mortgaged Property or the security of this Security Instrument, all other monetary obligations of Borrower under the Loan Documents (other than the Environmental Indemnity Agreement), including amounts due as a result of any indemnification obligations, and any Enforcement Costs.

“Insolvency Laws” means the Bankruptcy Code, together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar laws, proceedings, or equitable principles affecting the enforcement of creditors’ rights, as amended from time to time.

“Land” means the real property described in Exhibit A.

“**Leases**” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals thereof.

“**Lien**” means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman’s or mechanic’s lien, or any lien of a Governmental Authority, including any lien in connection with the payment of utilities, or any other encumbrance.

“**Mortgaged Property**” means all of Borrower’s present and hereafter acquired right, title and interest, if any, in and to all of the following:

- (a) the Land;
- (b) the Improvements;
- (c) the Personalty;
- (d) current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (e) insurance policies relating to the Mortgaged Property (and any unearned premiums) and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirements;
- (f) awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, including any awards or settlements resulting from (1) Condemnation Actions, (2) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation Action, or (3) the total or partial taking of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;
- (g) contracts, options and other agreements for the sale of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;
- (h) Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;
- (i) earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Mortgage Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;
- (j) Imposition Deposits;
- (k) refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);
- (l) tenant security deposits;
- (m) names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;
- (n) products, and all cash and non-cash proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; and

(o) all of Borrower's right, title and interest in the oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Mortgaged Property and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized.

"Permitted Encumbrance" means only the easements, restrictions and other matters listed in a schedule of exceptions to coverage in the Title Policy and Taxes for the current tax year that are not yet due and payable.

"Personalty" means all of Borrower's present and hereafter acquired right, title and interest in all Goods, accounts, choses of action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

"Prepayment Premium" has the meaning set forth in the Note.

"Property Jurisdiction" means the jurisdiction in which the Land is located.

"Rents" means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any "Housing Assistance Payments Contract" or other rental subsidy agreement (if any), parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits.

"Taxes" means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, may become a lien, on the Land or the Improvements or any taxes upon any Loan Document.

"Title Policy" means the mortgagee's loan policy of title insurance issued in connection with the Mortgage Loan and insuring the lien of the Security Instrument as set forth therein, as approved by Lender.

"UCC" means the Uniform Commercial Code in effect in the Property Jurisdiction, as amended from time to time.

"UCC Collateral" means any or all of that portion of the Mortgaged Property in which a security interest may be granted under the UCC and in which Borrower has any present or hereafter acquired right, title or interest.

2. Security Agreement; Fixture Filing.

(a) To secure to Lender, the repayment of the Indebtedness, and all renewals, extensions and modifications thereof, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower hereby pledges, assigns, and grants to Lender a continuing security interest in the UCC Collateral. This Security Instrument constitutes a security agreement and a financing statement under the UCC. This Security Instrument also constitutes a financing statement pursuant to the terms of the UCC with respect to any part of the Mortgaged Property that is or may become a Fixture under applicable law, and will be recorded as a "fixture filing" in accordance with the UCC. Borrower hereby authorizes Lender to file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest without the signature of Borrower. If an Event of Default has occurred and is continuing, Lender shall have the remedies of a secured party under the UCC or otherwise provided at law or in equity, in addition to all remedies provided by this Security Instrument and in any Loan Document. Lender may exercise any or all of its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability or validity of Lender's other remedies. For purposes of

the UCC, the Debtor is Borrower and the Secured Party is Lender. For this purpose, the following information is set forth:

- (1) Name and address of Debtor:
161 Kahle Drive LLC, a Nevada Domestic Limited Liability Company,
5675 Meacham Street, Washoe Valley, NV 89704
- (2) Name and Address of Secured Party:
Western Highland Fund II, LLC, a Nevada limited liability company
3170 US Highway 50, Suite 10, South Lake Tahoe, CA 96150
- (3) This document covers goods that are or are to become fixtures.
- (4) Description of Real Estate: See Exhibit "A."
- (5) Owner of Record of Real Estate: Debtor.
- (6) This Financing Statement covers Proceeds.
- (7) Products of the Collateral are also covered.

(b) Borrower represents and warrants that: (1) Borrower maintains its chief executive office at the location set forth in the subsection (a) above, and Borrower will notify Lender in writing of any change in its chief executive office within five (5) days of such change; (2) Borrower is the record owner of the Mortgaged Property; (3) Borrower's state of incorporation, organization, or formation, if applicable, is as set forth on Page 1 of this Security Instrument; (4) Borrower's exact legal name is as set forth on Page 1 of this Security Instrument; (5) Borrower is the owner of the UCC Collateral subject to no liens, charges or encumbrances other than the lien hereof; (6) except as expressly provided in the Loan Agreement, the UCC Collateral will not be removed from the Mortgaged Property without the consent of Lender; and (7) no financing statement covering any of the UCC Collateral or any proceeds thereof is on file in any public office except pursuant hereto.

(c) All property of every kind acquired by Borrower after the date of this Security Instrument which by the terms of this Security Instrument shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Borrower and without further conveyance or assignment become subject to the lien and security interest created by this Security Instrument. Nevertheless, Borrower shall execute, acknowledge, deliver and record or file, as appropriate, all and every such further deeds of trust, mortgages, deeds to secure debt, security agreements, financing statements, assignments and assurances as Lender shall require for accomplishing the purposes of this Security Instrument and to comply with the rerecording requirements of the UCC.

3. Assignment of Leases and Rents; Appointment of Receiver; Lender in Possession.

(a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Leases and Rents. It is the intention of Borrower to establish present, absolute and irrevocable transfers and assignments to Lender of all Leases and Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower. Borrower and Lender intend the assignments of Leases and Rents to be effective immediately and to constitute absolute present assignments, and not assignments for additional security only. Only for purposes of giving effect to these absolute assignments of Leases and Rents, and for no other purpose, the Leases and Rents shall not be deemed to be a part of the Mortgaged Property. However, if these present, absolute and unconditional assignments of Leases and Rents are not enforceable by their terms under the laws of the Property Jurisdiction, then each of the Leases and Rents shall be included as part of the Mortgaged Property, and it is the intention of Borrower, in such circumstance, that this Security Instrument create and perfect a lien on each of the Leases and Rents in favor of Lender, which liens shall be effective as of the date of this Security Instrument.

(b) Until an Event of Default has occurred and is continuing, but subject to the limitations set forth in the Loan Documents, Borrower shall have a revocable license to exercise all rights, power and authority granted to Borrower under the Leases (including the right, power and authority to modify the terms of any Lease, extend

or terminate any Lease, or enter into new Leases, subject to the limitations set forth in the Loan Documents), and to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender, and to apply all Rents to pay amounts due under the Note and the other amounts then due and payable under the other Loan Documents, including Imposition Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities and Impositions (to the extent not included in Imposition Deposits), tenant improvements and other capital expenditures. So long as no Event of Default has occurred and is continuing (and no event which, with the giving of notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing), the Rents remaining after application pursuant to the preceding sentence may be retained and distributed by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Security Instrument.

(c) If an Event of Default has occurred and is continuing, without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, the revocable license granted to Borrower pursuant to Section 3(b) shall automatically terminate, and Lender shall immediately have all rights, powers and authority granted to Borrower under any Lease (including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease) and, without notice, Lender shall be entitled to all Rents as they become due and payable, including Rents then due and unpaid. During the continuance of an Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender, and Borrower shall, upon Borrower's receipt of any Rents from any sources, pay the total amount of such receipts to Lender. Although the foregoing rights of Lender are self-effecting, at any time during the continuance of an Event of Default, Lender may make demand for all Rents, and Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant shall be obligated to inquire further as to the occurrence or continuance of an Event of Default, and no tenant shall be obligated to pay to Borrower any amounts that are actually paid to Lender in response to such a notice. Any such notice by Lender shall be delivered to each tenant personally, by mail or by delivering such demand to each rental unit.

(d) If an Event of Default has occurred and is continuing, Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower, and even in the absence of waste, enter upon, take and maintain full control of the Mortgaged Property, and may exclude Borrower and its agents and employees therefrom, in order to perform all acts that Lender, in its discretion, determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents (including through use of a lockbox, at Lender's election), the making of repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing this assignment of Rents, protecting the Mortgaged Property or the security of this Security Instrument and the Mortgage Loan, or for such other purposes as Lender in its discretion may deem necessary or desirable.

(e) Notwithstanding any other right provided Lender under this Security Instrument or any other Loan Document, if an Event of Default has occurred and is continuing, and regardless of the adequacy of Lender's security or Borrower's solvency, and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in Section 3. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Security Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver ex parte, if permitted by applicable law. Borrower consents to shortened time consideration of a motion to appoint a receiver. Lender or the receiver, as applicable, shall be entitled to receive a reasonable fee for managing the Mortgaged Property and such fee shall become an additional part of the Indebtedness. Immediately upon appointment of a receiver or Lender's entry upon and taking possession and control of the Mortgaged Property, possession of the Mortgaged Property and all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property, and all security deposits and prepaid Rents, shall be surrendered to Lender or the receiver, as applicable.

If Lender or receiver takes possession and control of the Mortgaged Property, Lender or receiver may exclude Borrower and its representatives from the Mortgaged Property.

(f) The acceptance by Lender of the assignments of the Leases and Rents pursuant to this Section 3 shall not at any time or in any event obligate Lender to take any action under any Loan Document or to expend any money or to incur any expense. Lender shall not be liable in any way for any injury or damage to person or property sustained by any Person in, on or about the Mortgaged Property. Prior to Lender's actual entry upon and taking possession and control of the Land and Improvements, Lender shall not be:

(1) obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease);

(1) obligated to appear in or defend any action or proceeding relating to any Lease or the Mortgaged Property; or

(2) responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property.

The execution of this Security Instrument shall constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and shall be that of Borrower, prior to such actual entry and taking possession and control by Lender of the Land and Improvements.

(g) Lender shall be liable to account only to Borrower and only for Rents actually received by Lender. Lender shall not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property by reason of any act or omission of Lender under this Section 3 and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law, provided that Lender shall not be released from liability that occurs as a result of Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction pursuant to a final, non-appealable court order. If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes shall be added to, and become a part of, the principal balance of the Indebtedness, be immediately due and payable, and bear interest at the Default Rate from the date of disbursement until fully paid. Any entering upon and taking control of the Mortgaged Property by Lender or the receiver, and any application of Rents as provided in this Security Instrument, shall not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Security Instrument or any Loan Document.

(h) The assignment of Rents by Borrower pursuant to this Section 3 is subject to the Uniform Assignment of Rents Act (the "Act") codified as NRS Chapter 107A, as amended or recodified from time to time, and in the event of any conflict or inconsistency between the provisions of this Section 3 and the provisions of the Act, the provisions of the Act shall control.

4. Protection of Lender's Security.

If Borrower fails to perform any of its obligations under this Security Instrument or any other Loan Document, or any action or proceeding is commenced that purports to affect the Mortgaged Property, Lender's security, rights or interests under this Security Instrument or any Loan Document (including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Environmental Laws, fraudulent conveyance or reorganizations or proceedings involving a debtor or decedent), Lender may, at its option, make such appearances, disburse or pay such sums and take such actions, whether before or after an Event of Default or whether directly or to any receiver for the Mortgaged Property, as Lender reasonably deems necessary to perform such obligations of Borrower and to protect the Mortgaged Property or Lender's security, rights or interests in the Mortgaged Property or the Mortgage Loan, including:

(a) paying fees and out-of-pocket expenses of attorneys, accountants, inspectors and consultants;

(b) entering upon the Mortgaged Property to make repairs or secure the Mortgaged Property;

(c) obtaining (or force-placing) the insurance required by the Loan Documents; and

- (d) paying any amounts required under any of the Loan Documents that Borrower has failed to pay.

Any amounts so disbursed or paid by Lender shall be deemed to be obligatory advances and added to, and become part of, the principal balance of the Indebtedness, be immediately due and payable and bear interest at the Default Rate from the date of disbursement until fully paid. The provisions of this Section 4 shall not be deemed to obligate or require Lender to incur any expense or take any action.

5. Default; Acceleration; Remedies.

(a) If an Event of Default has occurred and is continuing, Lender, at its option, may declare the Indebtedness to be immediately due and payable without further demand, and may either with or without entry or taking possession as herein provided or otherwise, proceed by suit or suits at law or in equity or any other appropriate proceeding or remedy to enforce payment of the Mortgage Loan; to foreclose this Security Instrument judicially or non-judicially by the power of sale granted herein; to enforce or exercise any right under any Loan Document; and to pursue any one (1) or more other remedies provided in this Security Instrument or in any other Loan Document or otherwise afforded by applicable law. Each right and remedy provided in this Security Instrument or any other Loan Document is distinct from all other rights or remedies under this Security Instrument or any other Loan Document or otherwise afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order.

(b) Borrower acknowledges that the power of sale granted in this Security Instrument may be exercised or directed by Lender without prior judicial hearing. In the event Lender invokes the power of sale:

(1) Lender shall execute or cause Trustee to execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and shall cause such notice to be recorded in each county in which the Mortgaged Property is located. Borrower hereby authorizes and empowers Trustee to take possession of the Mortgaged Property, or any part thereof, and hereby grants to Trustee a power of sale and authorizes and empowers Trustee to sell (or, in the case of the default of any purchaser, to resell) the Mortgaged Property or any part thereof, in compliance with applicable law, including compliance with any and all notice and timing requirements for such sale (which location shall be in the county in which the Mortgaged Property is located);

(2) Trustee shall have the authority to determine the terms of the sale, subject to applicable law. In connection with any such sale, the whole of the Mortgaged Property may be sold in one (1) parcel as an entirety or in separate lots or parcels at the same or different times. Lender shall have the right to become the purchaser at any such sale. Trustee shall be entitled to receive fees and expenses from such sale not to exceed the amount permitted by applicable law; and,

(3) Within a reasonable time after the sale, Trustee shall deliver to the purchaser of the Mortgaged Property a deed or such other appropriate conveyance document conveying the Mortgaged Property so sold without any express or implied covenant or warranty. The recitals in such deed or document shall be prima facie evidence of the truth of the statements made in those recitals; and

(4) Borrower acknowledges and agrees that the proceeds of any sale shall be applied as determined by Lender unless otherwise required by applicable law.

(c) In connection with the exercise of Lender's rights and remedies under this Security Instrument and any other Loan Document, there shall be allowed and included as Indebtedness: all expenditures and expenses authorized by applicable law and all other expenditures and expenses which may be paid or incurred by or on behalf of Lender for reasonable legal fees, appraisal fees, outlays for documentary and expert evidence, stenographic charges and publication costs; all expenses of any environmental site assessments, environmental audits, environmental remediation costs, appraisals, surveys, engineering studies, wetlands delineations, flood plain studies, and any other similar testing or investigation deemed necessary or advisable by Lender incurred in preparation for, contemplation of or in connection with the exercise of Lender's rights and remedies under the Loan Documents; and costs (which may be reasonably estimated as to items to be expended in connection with the exercise of Lender's rights and remedies under the Loan Documents) of procuring all abstracts of title, title searches and examinations, title insurance policies, and similar data and assurance with respect to title as Lender

may deem reasonably necessary either to prosecute any suit or to evidence the true conditions of the title to or the value of the Mortgaged Property to bidders at any sale which may be held in connection with the exercise of Lender's rights and remedies under the Loan Documents. All expenditures and expenses of the nature mentioned in this Section 5, and such other expenses and fees as may be incurred in the protection of the Mortgaged Property and rents and income therefrom and the maintenance of the lien of this Security Instrument, including the fees of any attorney employed by Lender in any litigation or proceedings affecting this Security Instrument, the Note, the other Loan Documents, or the Mortgaged Property, including bankruptcy proceedings, any Foreclosure Event, or in preparation of the commencement or defense of any proceedings or threatened suit or proceeding, or otherwise in dealing specifically therewith, shall be so much additional Indebtedness and shall be immediately due and payable by Borrower, with interest thereon at the Default Rate until paid.

(d) Any action taken by Trustee or Lender pursuant to the provisions of this Section 5 shall comply with the laws of the Property Jurisdiction. Such applicable laws shall take precedence over the provisions of this Section 5, but shall not invalidate or render unenforceable any other provision of any Loan Document that can be construed in a manner consistent with any applicable law. If any provision of this Security Instrument shall grant to Lender (including Lender acting as a mortgagee-in-possession), Trustee or a receiver appointed pursuant to the provisions of this Security Instrument any powers, rights or remedies prior to, upon, during the continuance of or following an Event of Default that are more limited than the powers, rights, or remedies that would otherwise be vested in such party under any applicable law in the absence of said provision, such party shall be vested with the powers, rights, and remedies granted in such applicable law to the full extent permitted by law.

6. Waiver of Statute of Limitations and Marshaling.

Borrower hereby waives the right to assert any statute of limitations as a bar to the enforcement of the lien of this Security Instrument or to any action brought to enforce any Loan Document. Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Security Instrument and/or any other Loan Document or by applicable law. Lender shall have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies. Borrower, for itself and all who may claim by, through, or under it, and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Security Instrument waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels (at the same time or different times) in connection with the exercise of any of the remedies provided in this Security Instrument or any other Loan Document, or afforded by applicable law.

7. Waiver of Redemption; Rights of Tenants.

(a) Borrower hereby covenants and agrees that it will not at any time apply for, insist upon, plead, avail itself, or in any manner claim or take any advantage of, any appraisal, stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter enacted or in force in order to prevent or hinder the enforcement or foreclosure of this Security Instrument. Without limiting the foregoing:

(b) Borrower for itself and all Persons who may claim by, through, or under Borrower, hereby expressly waives any so-called "Moratorium Law" and any and all rights of reinstatement and redemption, if any, under any order or decree of foreclosure of this Security Instrument, it being the intent hereof that any and all such "Moratorium Laws," and all rights of reinstatement and redemption of Borrower and of all other Persons claiming by, through, or under Borrower are and shall be deemed to be hereby waived to the fullest extent permitted by applicable law;

(c) Borrower shall not invoke or utilize any such law or laws or otherwise hinder, delay or impede the execution of any right, power or remedy herein or otherwise granted or delegated to Lender but will suffer and permit the execution of every such right, power and remedy as though no such law or laws had been made or enacted; and

(d) if Borrower is a trust, Borrower represents that the provisions of this Section 7 (including the waiver of reinstatement and redemption rights) were made at the express direction of Borrower's beneficiaries and the persons having the power of direction over Borrower, and are made on behalf of the trust estate of Borrower and all beneficiaries of Borrower, as well as all other persons mentioned above.

(e) Lender shall have the right to foreclose subject to the rights of any tenant or tenants of the Mortgaged Property having an interest in the Mortgaged Property prior to that of Lender. The failure to join any such tenant or tenants of the Mortgaged Property as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Borrower as a defense in any civil action instituted to collect the Indebtedness, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

8. Notice. All notices under this Security Instrument shall be:

(a) in writing, and shall be delivered, in person, mailed, postage prepaid, either by registered or certified delivery, return receipt requested, or sent by overnight express courier;

(b) addressed to the intended recipient at its respective address set forth on Page 1 of this Security Instrument; and

(c) deemed given on the earlier to occur of:

(1) the date when the notice is received by the addressee; or

(2) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

(d) Any party to this Security Instrument may change the address to which notices intended for it are to be directed by means of notice given to the other party in accordance with this Section 8.

(e) Any required notice under this Security Instrument which does not specify how notices are to be given shall be given in accordance with this Section 8.

9. Mortgagee-in-Possession.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred in this Security Instrument shall not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

10. Release.

Upon payment in full of the Indebtedness, Lender shall cause the release of this Security Instrument and Borrower shall pay Lender's costs incurred in connection with such release.

11. Substitute Trustee.

Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee, which instrument in accordance with the laws of the Property Jurisdiction. Without conveyance of the Mortgaged Property, the successor Trustee shall succeed to all the title, power and duties conferred upon the Trustee in this Security Instrument and by the applicable law.

12. Transfer or Encumbrance of Mortgaged Property.

If all, or any part, of the Mortgaged Property, or any interest therein, is sold, conveyed, alienated, transferred or encumbered (or if a beneficial interest in Borrower is sold, transferred or encumbered and Borrower is not a natural person), whether voluntary or involuntarily, without Lender's prior written consent, which Lender may withhold in its sole and absolute discretion, Lender shall have the right, at its option, except as prohibited by law, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any Note evidencing the same, immediately due and payable. If Lender exercises this option, Lender shall give

Borrower notice of acceleration. The notice shall provide a period of not less than 10 days from the date the notice is delivered or mailed within which borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

13. Books and Records.

Borrower shall keep adequate books and records of account and furnish Lender with financial statements prepared by a certified public accountant reasonably acceptable to Lender, and other information concerning the affairs of Borrower as Lender may reasonably request, in form and detail reasonably satisfactory to Lender, including, annual statements of income and expense related to the operation of the Mortgaged Property (including a current rent roll, gross rental income, other income, real estate taxes, insurance, operating expenses and depreciation), a copy of Borrower's federal income tax return (including all supporting schedules) within 90 days after the end of each fiscal year, and from time to time, interim financial statements and other information as reasonably requested by Lender. All such financial statements, and other information shall be certified to be true and accurate by an individual responsible for the financial affairs of Borrower, in such individual's individual capacity. In the event that such financial statements and other information are not furnished to Lender by Borrower, or, if furnished, are not in a form reasonably acceptable to Lender, Lender may, in addition to any other remedies which Lender has under this Security Instrument, the Note, or any of the Other Security Documents, audit the books and records of Borrower, and any expense of the audit shall be added to the Debt. Immediately upon the appointment of a receiver of the Mortgaged Property by a court of competent jurisdiction, Borrower shall deliver all books and records or other documents required to be maintained under the terms of this section to such receiver.

14. Nevada State Specific Provisions.

Lender shall have the right to recommend to the court the person to be appointed as receiver pursuant to Section 3.

(a) In the event that Lender consents to a Transfer (as defined in the Loan Agreement) of the Mortgaged Property to and an assumption of the Mortgage Loan by a new borrower, Lender shall be entitled to charge and be paid the Transfer Fee (as defined in the Loan Agreement), in addition to requiring satisfaction of all other conditions to such Transfer and assumption as set forth in the Loan Agreement.

(b) The covenants set forth as Nos. 6, 7 (a reasonable amount), 8, and 9 of NRS Section 107.030, are hereby adopted and made a part of this Security Instrument.

15. Governing Law; Consent to Jurisdiction and Venue.

This Security Instrument shall be governed by the laws of the Property Jurisdiction without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Borrower agrees that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies that arise under or in relation to any security for the Indebtedness. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

16. Miscellaneous Provisions.

(a) This Security Instrument shall bind, and the rights granted by this Security Instrument shall benefit, the successors and assigns of Lender. This Security Instrument shall bind, and the obligations granted by this Security Instrument shall inure to, any permitted successors and assigns of Borrower under the Loan Agreement. If more than one (1) person or entity signs this Security Instrument as Borrower, the obligations of such persons and entities shall be joint and several. The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Security Instrument shall create any other relationship between Lender and Borrower. No creditor of any party to this Security Instrument and no other person shall be a third party beneficiary of this Security Instrument or any other Loan Document.

(b) The invalidity or unenforceability of any provision of this Security Instrument or any other Loan Document shall not affect the validity or enforceability of any other provision of this Security Instrument or of any other Loan Document, all of which shall remain in full force and effect. This Security Instrument contains the complete and entire agreement among the parties as to the matters covered, rights granted and the obligations assumed in this Security Instrument. This Security Instrument may not be amended or modified except by written agreement signed by the parties hereto.

(c) The following rules of construction shall apply to this Security Instrument:

(1) The captions and headings of the sections of this Security Instrument are for convenience only and shall be disregarded in construing this Security Instrument.

(1) Any reference in this Security Instrument to an "Exhibit" or "Schedule" or a "Section" or an "Article" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit or schedule attached to this Security Instrument or to a Section or Article of this Security Instrument.

(2) Any reference in this Security Instrument to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(3) Use of the singular in this Security Instrument includes the plural and use of the plural includes the singular.

(4) As used in this Security Instrument, the term "including" means "including, but not limited to" or "including, without limitation," and is for example only, and not a limitation.

(5) Whenever Borrower's knowledge is implicated in this Security Instrument or the phrase "to Borrower's knowledge" or a similar phrase is used in this Security Instrument, Borrower's knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower's knowledge after reasonable and diligent inquiry and investigation.

(6) Unless otherwise provided in this Security Instrument, if Lender's approval, designation, determination, selection, estimate, action or decision is required, permitted or contemplated hereunder, such approval, designation, determination, selection, estimate, action or decision shall be made in Lender's sole and absolute discretion.

(7) All references in this Security Instrument to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(8) "Lender may" shall mean at Lender's discretion, but shall not be an obligation.

17. Time is of the Essence.

Borrower agrees that, with respect to each and every obligation and covenant contained in this Security Instrument and the other Loan Documents, time is of the essence.

18. WAIVER OF TRIAL BY JURY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (BY ITS ACCEPTANCE HEREOF) (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS SECURITY INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH OF BORROWER AND LENDER, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

19. Insurance.

Borrower, at its sole cost and expense, will maintain or cause to be maintained the following (the "Policies):

(a) Commercial general liability (including contractual liability) insurance ("CGL Insurance") covering any and all liability of the insured arising out of the ownership, maintenance, use or occupancy of the Mortgaged Property, and all operations incidental thereto said insurance to have limits of not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence for bodily injury, personal injury and property damage liability;

(b) Insurance ("Building Insurance") on all buildings, fixtures and improvements located on the Mortgaged Property against "special perils" (including "ordinance or law coverage"), in amounts at least equal to the greater of: (x) the full replacement cost thereof (without deduction for depreciation) as such replacement cost shall be determined from time to time at the reasonable request of Lender; or (y) unless prohibited by law, the unpaid principal amount of the Debt. The Building Insurance shall include a co-insurance waiver or agreed amount endorsement. Such insurance shall, during the course of any construction of additions to the Improvements, be on Special Form Builder's Risk 100% Completed Value Non-Reporting Form or other form approved by Lender;

(c) Insurance on personal property against fire and any peril generally included within the classification of "extended coverage" ("Personal Property Insurance") in amounts at least equal to the replacement value thereof;

(d) If and whenever Borrower shall have employees, workers' compensation insurance as required by law and employer's liability insurance with limits of liability of not less than \$100,000/\$500,000/\$100,000;

(e) If the Mortgaged Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "Act"), Borrower shall keep the Mortgaged Property covered by flood insurance ("Flood Insurance") up to the maximum limit of coverage available under the Act, but not in excess of the amount of the Debt; and

(f) Such other insurance with respect to the Mortgaged Property in such amounts and against such insurable hazards as Lender from time to time may reasonably require ("Additionally Required Insurance").

All insurance required hereunder, including the CGL Insurance (the "**Policies**"), shall provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days' written notice of such revision, cancellation or reduction shall have been given to Lender; be issued by insurance companies which are qualified to do business in the State, which have at least one of the following A.M. Best Co. combinations of Best's Rating and Best Financial Size Category: A-, XV; A, XIII; A+, IX; or A++, VIII; and which are satisfactory to Lender in all other ways.

The CGL Insurance shall name Lender as an additional insured; apply severally as to Borrower and Lender (excepting the limits of liability); cover each of them as insureds in the same manner as if separate policies had been issued to each of them (excepting the limits of liability); contain no provisions affecting any rights which any of them would have as claimants if not so named as insureds; and be primary insurance with any other valid and collectible insurance available to Lender constituting excess insurance.

The Building Insurance, Personal Property Insurance and Flood Insurance shall name Lender as an additional insured; and have attached to them a Lender's Loss Payable Endorsement naming Lender as Lender, a standard waiver of subrogation endorsement, a stipulated amount endorsement, and a full replacement cost endorsement.

(g) Borrower will deliver to Lender original binders or evidence of all required insurance to Lender and Borrower shall promptly furnish to Lender copies of all renewal notices and all receipts of paid premiums received by it. At least thirty (30) days prior to the expiration date of a required policy, Borrower shall deliver to Lender a renewal binder or evidence of insurance in a form satisfactory to Lender.

(h) If the Mortgaged Property is sold at a Foreclosure Event or if Lender shall acquire title to the Mortgaged Property, Lender shall have all of the rights of Borrower to the Policies and the unearned premiums on them and to the proceeds resulting from any damage to Mortgaged Property prior to such sale or acquisition.

(i) If any part of the Mortgaged Property is damaged or destroyed by fire or other casualty, Borrower will promptly give written notice thereof to the insurance carrier and Lender, and will not adjust any damage or loss which exceeds \$50,000 unless Lender joins in such adjustment; but if there has been no adjustment of any such damage or loss within four months from the date of occurrence and if an Event of Default exists at the end of such four-month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies and appear in and prosecute any action arising from such policies. In connection therewith, Borrower does hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Borrower (which appointment is coupled with an interest) to do any of the above in the name of Borrower.

(j) All sums in excess of \$50,000 paid under any insurance policies relating to the Building Insurance, Personal Property Insurance, Flood Insurance or Additionally Required Insurance (collectively the "Proceeds"), shall be paid to Lender which may, at its option (but subject to the provisions of this Paragraph), apply them, after first deducting Lender's expenses incurred in the collection thereof, to the payment of the Debt, whether or not due and in such order of application as Lender may determine, or to the repair, replacement, rebuilding or restoration of the Mortgaged Property, in such manner as Lender may determine. However, Lender shall make all Proceeds (after first deducting therefrom Lender's reasonable expenses incurred in collecting them) available to Borrower to reimburse Borrower for Borrower's reasonable costs of restoration, repair, replacement or rebuilding of the Improvements, Goods and Fixtures in accordance with procedures reasonably required by Lender (and shall not be applied toward the payment of the Debt until after restoration and repair of the Improvements) provided:

- (1) There is no Event of Default;
- (2) Borrower has notified Lender of Borrower's intention to perform such restoration or repair within thirty (30) days after adjusting the loss or casualty;
- (3) Lender receives reasonably satisfactory evidence that the Premises and Equipment have been fully restored or that by application of the Proceeds will be fully restored to their condition prior to the damage or destruction, free and clear of all liens other than the Permitted Encumbrances;
- (4) If, in the reasonable judgment of Lender, the Proceeds will be insufficient to restore the Improvements and Equipment to their condition prior to the damage or destruction, Borrower shall demonstrate to Lender the availability of funds which, together with the Proceeds, are sufficient to restore the Improvements to their condition prior to the damage or destruction; and
- (5) There will, in the reasonable judgment of Lender, remain sufficient time to complete the restoration or repair of the Improvements, Goods and Fixtures prior to the Date of Maturity (as defined in the Note).

Any Proceeds remaining after reimbursement of Borrower for its costs of restoring the Improvements, Goods and Fixtures at Lender's option, may be applied to partial prepayment of the Debt. Any such application of the Proceeds to the payment of the Debt shall be without prepayment premium or penalty, if any, otherwise applicable and shall not extend or postpone the due dates of the monthly installments under the Note or change the amount of such installments. Any remaining proceeds not applied to the Indebtedness shall be paid to Borrower.

20. Majority Action.

If there is more than one Lender of this Security Instrument, then the Lenders holding more than 50% of the recorded beneficial interests of this Security Instrument may govern the actions to be taken on behalf of all Lenders in accordance with California Civil Code Section 2941.9 in the Event of Default or foreclosure for matters that require direction or approval of the Lenders, including: i) designation of the broker, servicing agent, and/or other person acting on behalf of the Lenders; and ii) the sale, encumbrance, or lease of the Mortgaged Property

owned by the Lenders resulting from a Foreclosure Event or receipt of the Security Instrument in lieu of foreclosure (collectively, "Lender Actions"). If a Department of Real Estate ("DRE") licensed real estate broker(s) (collectively, "Broker"), or affiliate of Broker, invests in a portion of the Note secured by Security Instrument and is the issuer or servicer of the corresponding Loan, then that Broker is excluded from voting on Lender Actions with respect to the percentage of such Broker's investment in the Loan. For purposes of this paragraph, "affiliate of the Broker" includes any person as defined in Section 25013 of the Corporations Code who is controlled by, or is under common control with, or who controls, the Broker. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of management and policies.

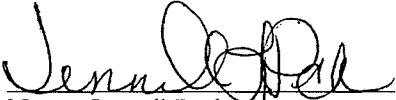
21. Right to Refinance Senior Lien in Default.

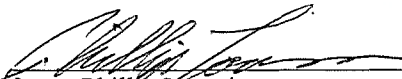
If any lien that is senior to this Security Instrument is in default and such default is not cured within 30 days, Lender shall have the right, without notice to Borrower, to advance to such senior lienholder the entire amount owed to it and to add the advance to the unpaid principal balance of the Note secured by this Security Instrument. In addition, Borrower shall pay an advance fee of 2% of the entire amount advanced to such senior lienholder, paid to Lender, which Lender may add to the unpaid principal balance of the Note secured by this Security Instrument.

(signatures follow on next page)

IN WITNESS WHEREOF, Borrower has signed and delivered this Security Instrument or has caused this Security Instrument to be signed and delivered by its duly authorized representative.

BORROWER: 161 Kahle Drive LLC, a Nevada Domestic Limited Liability Company

By: 
Name: Jennell Peck
Title: Manager

By: 
Name: Phillip Loomis
Title: Manager

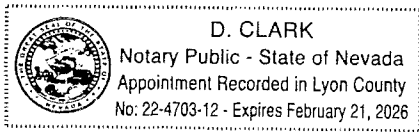


Notarial Acknowledgement(s)
(duplicate this page as necessary)

Individual

STATE OF NEVADA)
)
 ~~COUNTY OF~~ Carson City) ss.
)

The foregoing instrument was acknowledged before me on 8/4/2023, by
Jennell Peck and Phillip Loomis.

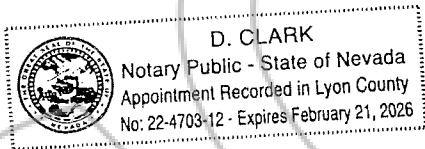


[Signature]
Signature of Notarial Officer

Entity

STATE OF NEVADA)
)
 ~~COUNTY OF~~ Carson City) ss.
)

The foregoing instrument was acknowledged before me on 8/4/2023 before me, by
Jennell Peck and Phillip Loomis as manager of
161 Kahle Dr, LLC.



[Signature]
Signature of Notarial Officer

EXHIBIT "A"

APN(s)/Tax ID. of Collateral Real Property:

1318-22-002-044

Street Address of Collateral Real Property:

161 Kahle Drive, Stateline, NV 89449

[Legal Description]

Attach the legal description from ALTA Commitment 23036354-DC dated July 26, 2023 Schedule C

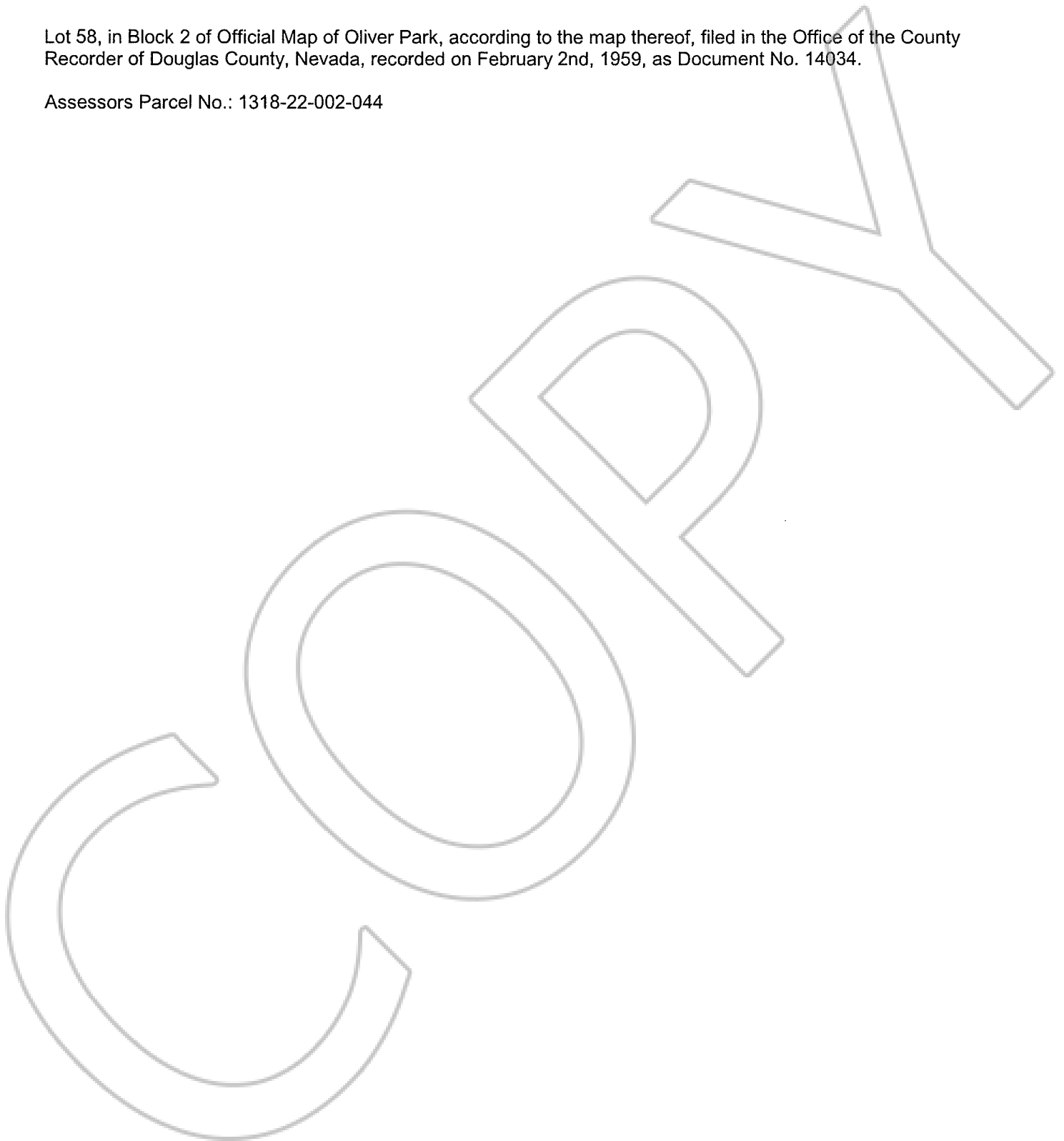


File No.: 23036354-DC

EXHIBIT A

Lot 58, in Block 2 of Official Map of Oliver Park, according to the map thereof, filed in the Office of the County Recorder of Douglas County, Nevada, recorded on February 2nd, 1959, as Document No. 14034.

Assessors Parcel No.: 1318-22-002-044



Loan No.: Peck 1

First Property Address: 161 Kahle Drive, Stateline, NV 89449

LOAN AND SECURITY AGREEMENT

between

Western Highland Fund II, LLC, a Nevada limited liability company

and

161 Kahle Drive LLC, a Nevada Domestic Limited Liability Company

dated

8-3-2023

Property(s): 161 Kahle Drive, Stateline, NV 89449

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "**Loan Agreement**") dated as of 8-3-2023, is between **161 Kahle Drive LLC**, a Nevada Domestic Limited Liability Company (collectively, the "**Borrower**") and **Western Highland Fund II, LLC**, a Nevada limited liability company (collectively, the "**Lender**").

RECITALS:

Borrower has applied to Lender for a loan in the aggregate principal sum of **\$450,000.00** (the "**Loan**") secured by the real property located at **161 Kahle Drive, Stateline, NV 89449** (collectively, the "**Mortgaged Property**"). Lender has agreed to make the Loan to Borrower on the terms and conditions herein contained.

DEFINITIONS

1. Defined Terms.

The following terms shall have the meanings set forth below:

"**Applicable Environmental Law**" shall mean any applicable federal, state or local laws, rules or regulations pertaining to health or the environment, or petroleum products, or radon radiation, or oil or hazardous or toxic substances, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("**CERCLA**"), the Resource Conservation and Recovery Act of 1976, as amended ("**RCRA**") 42 U.S.C. § 6901 *et seq.* as amended by the Superfund Amendments and Reauthorization Act of 1986 ("**SARA**"), Pub. L. 99-499, 100 Stat. 1613; the Toxic Substances Control Act ("**TSCA**"), 15 U.S.C. § 2601 *et seq.*; Emergency Planning and Community Right to Know Act of 1986 ("**EPCRA**"), 42 U.S.C. § 11001 *et seq.*; Clean Air Act ("**CAA**"), 42 U.S.C. § 7401 *et seq.*; Federal Water Pollution Control Act ("**FWPCA**"), 33 U.S.C. § 1251 *et seq.* The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA, and the terms "solid waste," "disposal," "dispose," and "disposed" shall have the meanings specified in RCRA, except that if such acts are amended to broaden the meanings thereof, the broader meaning shall apply herein prospectively from and after the date of such amendments; notwithstanding the foregoing, provided, to the extent that the laws of the state where Collateral is located establish a meaning for "hazardous substance" or "release" which is broader than that specified in CERCLA, as CERCLA may be amended from time to time, or a meaning for "solid waste," "disposal," and "disposed" which is broader than specified in RCRA, as RCRA may be amended from time to time, such broader meanings under said state law shall apply in all matters relating to the laws of such state.

"**Bankruptcy Event**" means any one or more of the following:

- (a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Borrower;
- (b) the acknowledgment in writing by Borrower (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
- (c) the making of a general assignment for the benefit of creditors by Borrower;
- (d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Borrower; or
- (e) the appointment of a receiver (other than a receiver appointed at the direction or request of Lender under the terms of the Loan Documents), liquidator, custodian, sequestrator, trustee or other similar officer who exercise control over Borrower or any substantial part of the assets of Borrower; provided, however, that any proceeding or case under (a) or (d) above shall not be a Bankruptcy Event until the ninetieth day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of Borrower, Guarantor, Key Principal, or any Borrower Affiliate (in which event such case or proceeding shall be a Bankruptcy Event immediately).

“Borrower Affiliate” means, as to Borrower, Guarantor or Key Principal:

- (a) any Person that owns any direct ownership interest in Borrower, Guarantor or Key Principal;
- (b) any Person that indirectly owns, with the power to vote, twenty percent (20%) or more of the ownership interests in Borrower, Guarantor or Key Principal;
- (c) any Person Controlled by, under common Control with, or which Controls, Borrower, Guarantor or Key Principal;
- (d) any entity in which Borrower, Guarantor or Key Principal directly or indirectly owns, with the power to vote, twenty percent (20%) or more of the ownership interests in such entity; or
- (e) any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower, Guarantor or Key Principal.

“Closing Agent” shall mean First Centennial Title Company of Nevada.

“Closing Date” shall mean the date of settlement of the Loan through a closing agent or escrow company as reflected on the final closing statement of the agent or company.

“Collateral” shall mean the Mortgaged Property, Improvements, and all other real and personal property from time to time securing all or any part of the Indebtedness.

“Collateral Account” means any account designated as such by Lender pursuant to a Collateral Agreement or as established pursuant to the Loan Agreement, including the Reserve/Escrow Account.

“Collateral Account Funds” means, collectively, the funds on deposit in any Collateral Account, including the Reserve/Escrow Account Funds.

“Collateral Agreement” means any separate agreement between Borrower and Lender and any other party (if applicable) for the establishment of any other fund, reserve or account related to the Mortgage Loan or the Mortgaged Property.

“Condemnation Action” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

“Default” shall mean the occurrence or existence of any event which, but for the giving of notice or expiration of time or both, would constitute an Event of Default.

“Default Rate/Damages” shall mean the rates and charges specified in the Note.

“Enforcement Costs” means all expenses and costs, including reasonable attorneys’ fees and expenses, fees and out-of-pocket expenses of expert witnesses and costs of investigation, incurred by Lender as a result of any Event of Default under this Loan Agreement or in connection with efforts to collect any amount due under the Loan Documents, or to enforce the provisions of this Loan Agreement or any of the other Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy or insolvency proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding or Foreclosure Event) or judicial or non-judicial foreclosure proceeding, to the extent permitted by law.

“Environmental Indemnity Agreement” or **“Indemnity”**), if applicable, means that certain Environmental Indemnity Agreement dated as of the date of this Agreement, executed by Borrower to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“Environmental Laws” has the meaning set forth in the Environmental Indemnity Agreement.

“Event of Default” shall mean an “Event of Default” as defined in Article 6 of this Agreement.

“Fixtures” means all Goods that are so attached or affixed to the Land or the Improvements as to constitute a fixture under the laws of the Property Jurisdiction.

“**GAAP**” shall mean generally accepted accounting principles as consistently applied by certified public accountants in accordance with applicable FASB rules and regulations.

“**Goods**” means all of Borrower’s present and hereafter acquired right, title and interest in all goods which are used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements, including inventory; furniture; furnishings; machinery, equipment, engines, boilers, incinerators, and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring, and conduits used in connection with radio, television, security, fire prevention, or fire detection, or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers, and other appliances; light fixtures, awnings, storm windows, and storm doors; pictures, screens, blinds, shades, curtains, and curtain rods; mirrors, cabinets, paneling, rugs, and floor and wall coverings; fences, trees, and plants; swimming pools; exercise equipment; supplies; tools; books and records (whether in written or electronic form); websites, URLs, blogs, and social network pages; computer equipment (hardware and software); and other tangible personal property which is used now or in the future in connection with the ownership, management, or operation of the Land or the Improvements or are located on the Land or in the Improvements.

“**Guaranteed Interest**” has the meaning set forth in the Note.

“**Guarantor**” shall collectively mean Jennell Peck, Phillip Loomis.

“**Guaranty**” shall mean that certain General Guaranty and Indemnity Agreement of even date herewith from the Guarantor in favor of Lender.

“**Imposition Deposits**” means deposits in an amount sufficient to accumulate with Lender the entire sum required to pay the Impositions when due.

“**Impositions**” means

- (a) any water and sewer charges which, if not paid, may result in a lien on all or any part of the Mortgaged Property
- (b) the premiums for fire and other casualty insurance, liability insurance, rent loss insurance and such other insurance as Lender may require under this Loan Agreement;
- (c) Taxes; and
- (d) amounts for other charges and expenses assessed against the Mortgaged Property which Lender at any time reasonably deems necessary to protect the Mortgaged Property, to prevent the imposition of liens on the Mortgaged Property, or otherwise to protect Lender’s interests, all as reasonably determined from time to time by Lender.

“**Improvements**” means the buildings, structures, improvements, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements, facilities, and additions and other construction on the Land.

“**Indebtedness**” or “**Loan**” means the principal of **\$450,000.00**, interest on, and all other amounts due at any time under the Note, this Loan Agreement, the Security Instrument or any other Loan Document (other than the Environmental Indemnity Agreement and Guaranty), including Prepayment Premiums, late charges, interest charged at the Default Rate/Damages, and accrued interest as provided in this Loan Agreement, Note and the Security Instrument, advances, costs and expenses to perform the obligations of Borrower or to protect the Mortgaged Property or the security of the Security Instrument, all other monetary obligations of Borrower under the Loan Documents (other than the Environmental Indemnity Agreement), including amounts due as a result of any indemnification obligations, and any Enforcement Costs.

“**Insolvency Laws**” means the Bankruptcy Code, together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment

of debt, dissolution, liquidation or similar laws, proceedings, or equitable principles affecting the enforcement of creditors' rights, as amended from time to time.

"Key Principal" means, collectively:

- (a) the Person that Controls Borrower that Lender determines is critical to the successful operation and management of Borrower and the Mortgaged Property, as identified as such in the Summary of Loan Terms; or
- (b) any Person who becomes a Key Principal after the date of the Loan Agreement and is identified as such in an assumption agreement, or another amendment or supplement to the Loan Agreement.

"Land" means the real property described in Exhibit "A."

"Leases" means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals thereof.

"Lien" means any claim or charge against property for payment of a debt or an amount owed for services rendered, including any mortgage, deed of trust, deed to secure debt, security interest, tax lien, any materialman's or mechanic's lien, or any lien of a Governmental Authority, including any lien in connection with the payment of utilities, or any other encumbrance.

"Loan Amount" shall mean the principal amount reflected in the Note.

"Loan Documents" shall mean this Agreement, the Note, the Security Instrument, any Guaranty, the Environmental Indemnity, together with any and all other documents executed by Borrower or others, evidencing, securing, or otherwise relating to the Loan.

"Loan Servicer" shall be mean Lender's designated agent to receive payments under the Loan.

"Note" shall mean that certain Promissory Note of even date herewith evidencing Borrower's promise to repay the Loan together with interest at the rate set forth therein.

"Mortgaged Property" means all of Borrower's present and hereafter acquired right, title and interest, if any, in and to all of the following:

- (a) the Land, real estate, whose common street address(es) is/are: 161 Kahle Drive, Stateline, NV 89449 [APN(s)/TAX ID: 1318-22-002-044];
- (b) the Improvements;
- (c) the Personalty;
- (d) current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefitting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;
- (e) insurance policies relating to the Mortgaged Property (and any unearned premiums) and all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirements;
- (f) awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property, including any awards or settlements resulting from (1) Condemnation Actions, (2) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation Action, or (3) the total or partial

taking of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(g) contracts, options and other agreements for the sale of the Land, the Improvements, the Personalty, or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(h) Leases and Lease guaranties, letters of credit and any other supporting obligation for any of the Leases given in connection with any of the Leases, and all Rents;

(i) earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the Mortgage Loan and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(j) Imposition Deposits;

(k) refunds or rebates of Impositions by any municipal, state or federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Security Instrument is dated);

(l) tenant security deposits;

(m) names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property;

(n) Collateral Accounts and all Collateral Account Funds;

(o) products, and all cash and non-cash proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds; and

(p) all of Borrower's right, title and interest in the oil, gas, minerals, mineral interests, royalties, overriding royalties, production payments, net profit interests and other interests and estates in, under and on the Mortgaged Property and other oil, gas and mineral interests with which any of the foregoing interests or estates are pooled or unitized.

"Payment Date" means the date scheduled installment payments are due under the Note.

"Permitted Encumbrance" means only the easements, restrictions and other matters listed in a schedule of exceptions to coverage in the Title Policy and Taxes for the current tax year that are not yet due and payable.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, government or any agency or political subdivision thereof, or any other form of entity.

"Personalty" means all of Borrower's present and hereafter acquired right, title and interest in all Goods, accounts, choses of action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements now or in the future, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

"Prepayment Premium" or **"Prepayment Penalty"** has the meaning set forth in the Note.

"Property Jurisdiction" means the jurisdiction in which the Land is located.

"Rents" means all rents (whether from residential or non-residential space), revenues and other income from the Land or the Improvements, including subsidy payments received from any sources, including payments under any "Housing Assistance Payments Contract" or other rental subsidy agreement (if any), parking fees, laundry and

vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and tenant security deposits.

“**Security Instrument**” shall mean that certain Deed of Trust (or Mortgage/Indenture), Security Agreement, Assignment of Leases and Rents and Fixture Filing of even date herewith granting to Lender a lien upon the Mortgaged Property and Improvements.

“**Single Purpose Entity**” shall have the meaning given to such term in Exhibit “C.”

“**Software**” means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include any computer program that is included in the definition of Goods.

“**Taxes**” means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, may become a lien, on the Land or the Improvements or any taxes upon any Loan Document.

“**Title Company**” shall mean First Centennial Title Company of Nevada.

“**Title Policy**” means the mortgagee’s loan policy of title insurance issued in connection with the Mortgage Loan and insuring the lien of the Security Instrument as set forth therein, as approved by Lender.

“**UCC**” means the Uniform Commercial Code in effect in the Property Jurisdiction, as amended from time to time.

“**UCC Collateral**” means any or all of that portion of the Mortgaged Property in which a security interest may be granted under the UCC and in which Borrower has any present or hereafter acquired right, title or interest.

Singular and Plural Terms. Singular terms shall include the plural forms and vice versa, as applicable, of the terms defined.

UCC Terms. Terms contained in this Agreement shall, unless otherwise defined herein or unless the context otherwise indicates, have the meanings, if any, assigned to them by Division 9 of the Uniform Commercial Code where the Collateral is located.

Accounting Terms. All accounting terms used in this Agreement shall be construed in accordance with GAAP, except as otherwise defined.

Amendments to Documents. All references to other documents or instruments shall be deemed to refer to such documents or instruments as they may hereafter be extended, renewed, modified, or amended and all replacements and substitutions therefor.

CONDITIONS TO THE LOAN

2. Conditions.

Lender's obligation to make the Loan or any Advance shall be effective only upon fulfillment of the following conditions:

- (a) **Letter of Intent.** Receipt and approval by Lender of all items required to be provided to Lender under the terms of the Letter of Intent or other summary of loan terms provided by Lender ("Letter of Intent") and satisfactory results to Lender’s due diligence.
- (b) **Payment of Fees.** Payment by Borrower of all fees and expenses required by this Agreement and the Letter of Intent.
- (c) **Execution of Documents.** Execution, delivery and, when appropriate, recording or filing, of all Loan Documents, and all other documents required by this Agreement, all in form and content satisfactory to Lender.
- (d) **Title Insurance.** Issuance of the Title Policy contemplated by the Letter of Intent, and receipt by Lender, prior to each advance of Loan proceeds, of a date-down endorsement to such title policy or other evidence

satisfactory to Lender that there has been no change in the status of the title to the Mortgaged Property, creation of any new encumbrance thereon, or occurrence of any event that could in Lender's opinion impair the priority of the lien of the Mortgage as of the time of such advance.

(e) **Fire and Casualty Insurance.** Borrower, at its sole cost and expense, procure, and maintain the following insurance (the "**Policies**"). Requirements:

(1) Commercial general liability insurance ("**CGL Insurance**") covering any and all liability of the insured arising out of the ownership, maintenance, use or occupancy of the Mortgaged Property, and all operations incidental thereto said insurance to have limits of not less than One Million Dollars (\$1,000,000.00) (or such higher figure required by Lender) combined single limit per occurrence for bodily injury, personal injury and property damage liability;

(2) Insurance ("**Building Insurance**") on all buildings, fixtures and improvements located on the Mortgaged Property against "special perils" (including "ordinance or law coverage"), in amounts at least equal to the greater of: (x) the full replacement cost thereof (without deduction for depreciation) as such replacement cost shall be determined from time to time at the reasonable request of Lender; or (y) unless prohibited by law, the unpaid principal amount of the Debt. The Building Insurance shall include a co-insurance waiver or agreed amount endorsement. Such insurance shall, during the course of any construction of additions to the Improvements, be on Special Form Builder's Risk 100% Completed Value Non-Reporting Form or other form approved by Lender;

(3) Insurance on personal property against fire and any peril generally included within the classification of "extended coverage" ("**Personal Property Insurance**") in amounts at least equal to the replacement value thereof;

(4) If and whenever Borrower shall have employees, workers' compensation insurance as required by law and employer's liability insurance with limits of liability of not less than \$100,000 per occurrence/\$500,000 total policy value/\$100,000 per employee;

(5) If the Mortgaged Property is located in an area which has been identified by the Secretary of Housing and Urban Development as a flood hazard area and in which flood insurance has been made available under the National Flood Insurance Act of 1968 (the "Act"), Borrower shall keep the Mortgaged Property covered by flood insurance ("**Flood Insurance**") up to the maximum limit of coverage available under the Act, but not in excess of the amount of the Debt; and

(6) Such other insurance with respect to the Mortgaged Property in such amounts and against such insurable hazards as Lender from time to time may reasonably require ("**Additionally Required Insurance**").

All insurance required hereunder, including the CGL Insurance (the "Policies"), shall provide that coverage shall not be revised, cancelled or reduced until at least thirty (30) days' written notice of such revision, cancellation or reduction shall have been given to Lender; be issued by insurance companies which are qualified to do business in the State, which have at least one of the following A.M. Best Co. combinations of Best's Rating and Best Financial Size Category: A-, XV; A, XIII; A+, IX; or A++, VIII; and which are satisfactory to Lender in all other ways.

The CGL Insurance shall name Lender as an additional insured; apply severally as to Borrower and Lender (excepting the limits of liability); cover each of them as insureds in the same manner as if separate policies had been issued to each of them (excepting the limits of liability); contain no provisions affecting any rights which any of them would have as claimants if not so named as insureds; and be primary insurance with any other valid and collectible insurance available to Lender constituting excess insurance.

The Building Insurance, Personal Property Insurance and Flood Insurance shall name Lender as an additional insured; and have attached to them a Lender's Loss Payable Endorsement naming Lender as Lender, a standard waiver of subrogation endorsement, a stipulated amount endorsement, and a full (f) cost endorsement. Borrower will deliver to Lender original binders or evidence of all required insurance to Lender and Borrower shall promptly furnish to Lender copies of all renewal notices and all receipts of paid premiums received by it. At least ten (10)

days prior to the expiration date of a required policy, Borrower shall deliver to Lender a renewal binder or evidence of insurance in a form satisfactory to Lender.

(f) **Proof of Loss.** If any part of the Mortgaged Property is damaged or destroyed by fire or other casualty, Borrower will promptly give written notice thereof to the insurance carrier and Lender, and will not adjust any damage or loss which exceeds \$50,000 unless Lender joins in such adjustment; but if there has been no adjustment of any such damage or loss within four months from the date of occurrence and if an Event of Default exists at the end of such four-month period or at any time thereafter, Lender may alone make proof of loss, adjust and compromise any claim under the policies and appear in and prosecute any action arising from such policies. In connection therewith, Borrower does hereby irrevocably authorize, empower and appoint Lender as attorney-in-fact for Borrower (which appointment is coupled with an interest) to do any of the above in the name of Borrower.

All sums in excess of \$50,000 paid under any insurance policies relating to the Building Insurance, Personal Property Insurance, Flood Insurance or Additionally Required Insurance (collectively the "Proceeds"), shall be paid to Lender which may, at its option (but subject to the provisions of this Paragraph), apply them, after first deducting Lender's expenses incurred in the collection thereof, to the payment of the Debt, whether or not due and in such order of application as Lender may determine, or to the repair, replacement, rebuilding or restoration of the Mortgaged Property, in such manner as Lender may determine. However, Lender shall make all Proceeds (after first deducting therefrom Lender's reasonable expenses incurred in collecting them) available to Borrower to reimburse Borrower for Borrower's reasonable costs of restoration, repair, replacement or rebuilding of the Improvements, Goods and Fixtures in accordance with procedures reasonably required by Lender (and shall not be applied toward the payment of the Debt until after restoration and repair of the Improvements) provided:

- (1) There is no Event of Default;
- (2) Borrower has notified Lender of Borrower's intention to perform such restoration or repair within thirty (30) days after adjusting the loss or casualty;
- (3) Lender receives reasonably satisfactory evidence that the Premises and Equipment have been fully restored or that by application of the Proceeds will be fully restored to their condition prior to the damage or destruction, free and clear of all liens other than the Permitted Encumbrances;
- (4) If, in the reasonable judgment of Lender, the Proceeds will be insufficient to restore the Improvements and Equipment to their condition prior to the damage or destruction, Borrower shall demonstrate to Lender the availability of funds which, together with the Proceeds, are sufficient to restore the Improvements to their condition prior to the damage or destruction; and
- (5) There will, in the reasonable judgment of Lender, remain sufficient time to complete the restoration or repair of the Improvements, Goods and Fixtures prior to the Date of Maturity (as defined in the Note).
- (6) Any Proceeds remaining after reimbursement of Borrower for its costs of restoring the Improvements, Goods and Fixtures at Lender's option, may be applied to partial prepayment of the Debt. Any such application of the Proceeds to the payment of the Debt shall be without prepayment premium or penalty, if any, otherwise applicable and shall not extend or postpone the due dates of the monthly installments under the Note or change the amount of such installments. Any remaining proceeds not applied to the Indebtedness shall be paid to Borrower.

(g) **No Defaults.** No Potential Default or Event of Default exists under any of the Loan Documents.

DISBURSEMENT OF THE LOAN

3. Disbursement.

Lender agrees on the terms and conditions and relying on the representations set forth herein to lend to Borrower, and Borrower agrees to borrow from Lender, the Loan amount. Subject to compliance by Borrower with all of the provisions of this Agreement, the Loan shall be disbursed in one sum to the Closing Agent, net of

any fees, prepaid items and reserves set forth in the Loan Documents and closing instructions, with written instructions permitting release only at such time as the Title Company becomes unconditionally obligated to issue satisfactory title insurance policy with respect to the Mortgaged Property. Interest will begin to accrue upon deposit with the Closing Agent.

REPRESENTATIONS AND WARRANTIES

4. Representations.

Borrower represents and warrants to Lender, knowing that Lender will rely on such representations and warranties as incentive to make the Loan, that:

(a) **Borrower's Existence and Ownership.** If Borrower is an entity, Borrower is a duly organized and existing entity, duly organized and qualified to do business in the state where it was formed, and having full power and authority to consummate the transactions contemplated by this Agreement. Borrower meets the definition and requirements of a Special Purpose Entity. The person(s) signing the Loan Documents have full power and authority to consummate the transactions contemplated by this Agreement.

(b) **Violations or Actions Pending.** There are no actions, suits, or proceedings pending or, to the best of Borrower's knowledge, threatened, which might adversely affect the financial condition of Borrower or any Guarantor or which might impair the value of any Collateral taken or to be taken by Lender in connection with this Agreement or any other Loan Documents. Neither Borrower nor any Guarantor is in violation of any agreement the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or Guarantor's business or assets, and neither Borrower nor any Guarantor is in violation of any order, judgment, or decree of any court, or any statute or governmental regulation to which Borrower or any Guarantor is subject, the violation of which might reasonably be expected to have a materially adverse effect on such Borrower's or any Guarantor's business or assets. Neither the execution and performance of this Agreement by Borrower nor the execution and performance of the Guaranty or Indemnity by any Guarantor will result in any breach of any mortgage, lease, credit or loan agreement or any other instrument which may bind or affect Borrower or any Guarantor.

(c) **Financial Statements.** All financial statements of Borrower, any Guarantor and other business enterprises in which the Guarantor has an interest heretofore given and hereafter to be given to Lender are and will be true and complete in all material respects as of their respective dates and consistently prepared and applied in accordance with GAAP, and fairly represent the financial conditions of the business or persons to which they pertain, and no materially adverse change has occurred in the financial conditions reflected therein since the respective date thereof.

(d) **Compliance with Laws and Regulations.** All necessary action has been taken to construct the Improvements in compliance with applicable covenants and restrictions of record and all applicable laws, ordinances, and regulations, including, without limitation, subdivision, zoning and environmental laws. The Improvements comply in all material respects all covenants and restrictions of record and all applicable laws, ordinances and regulations, including, without limitation, the Americans with Disabilities Act and regulations thereunder, the Fair Housing Act and regulations thereunder, applicable state law and regulations thereunder, and laws, ordinances and regulations relating to subdivision, zoning, building codes, set back requirements and environmental matters.

(e) **Roads and Utilities.** All utility and sanitary sewage services necessary for the use of the Improvements are available to the Mortgaged Property. All roads necessary for the full use of the Improvements for their intended purposes are operation and in usable condition. There are no off-property improvements necessary for the full use of the Improvements.

(f) **Priority of Security Instrument.** The Security Instrument, when duly executed, delivered, and recorded, will constitute a 1st lien against the Mortgaged Property, prior to all other liens and encumbrances, including those which may hereafter accrue, except for such matters as are expressly permitted herein or in the Security Instrument or which Lender hereafter approves in writing in Lender's sole discretion. There exists no

Property Assessed Clean Energy ("PACE"), Home Energy Renovation Opportunity ("HERO") or equivalent lien under the law of any state, liens or assessments and none are contemplated.

(g) **Condemnation.** There are no proceedings pending, or, to the best of Borrower's knowledge, threatened, to acquire any power of condemnation or eminent domain (a "**Condemnation Action**"), with respect to the Mortgaged Property, or any interest therein, or to enjoin or similarly prevent the construction or use of the Improvements.

(h) **Accuracy of Documents.** All documents furnished to Lender by or on behalf of Borrower as part of or in support of the Loan application or this Agreement are true, correct, complete in all material respects and accurately represent the matters to which they pertain.

(i) **Disclosure.** All information furnished or to be furnished by Borrower to the Lender in connection with the Loan or any of the Loan Documents, is, or will be at the time the same is furnished, accurate and correct in all material respects and complete insofar as completeness may be necessary to provide the Lender a true and accurate knowledge of the subject matter.

(j) **Compliance with Applicable Environmental Law.** To the best knowledge of Borrower, neither the Mortgaged Property nor the Borrower is in violation of or subject to any existing, pending or, to the best of Borrower's knowledge, threatened investigation or inquiry by any governmental authority or any response costs or remedial obligations under any Applicable Environmental Law, and this representation and warranty would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances known to Borrower pertaining to the Mortgaged Property. Borrower has not obtained and is not required to obtain any permits, licenses or similar authorizations to construct, occupy, operate or use any buildings, improvements, fixtures or equipment forming a part of the Mortgaged Property by reason of any Applicable Environmental Law other than those permits it has obtained or has notified Lender that it shall obtain. Borrower has taken all reasonable steps necessary to determine whether any asbestos, petroleum products, oil, hazardous substances, or solid wastes have been disposed of, or otherwise released on, or are otherwise located on the Mortgaged Property. Borrower is not aware of the existence of any such asbestos, petroleum products, oil, hazardous substances, or solid wastes on the Mortgaged Property in such amounts or concentrations as are in violation of any Applicable Environmental Laws; the use which the Borrower has made, makes or intends to make of the Mortgaged Property will not result in the location on or disposal or other release of any asbestos, petroleum products, oil, hazardous substances or solid waste on or to the Mortgaged Property. The Borrower agrees to notify the Lender in the event that any governmental agency or other entity notifies the Borrower that it may not be in compliance with any Applicable Environmental Laws. The Borrower agrees to permit the Lender, upon Lender's discovery of any fact or circumstance reasonably indicating that the Mortgaged Property may not be in compliance with Applicable Environmental Laws, to have access to the Mortgaged Property at all reasonable times in order to conduct, at the Borrower's expense, any tests which the Lender deems are reasonably necessary to ensure that the Borrower and the Mortgaged Property are in compliance with all Applicable Environmental Laws.

The representations and warranties contained herein shall be deemed continuing and in effect at all times while any Indebtedness remain outstanding.

COVENANTS OF BORROWER

5. Covenants.

Borrower covenants and agrees, from the date of this Agreement and as long as Borrower may obtain any Loan proceeds under this Agreement or any Indebtedness remain outstanding, to:

(a) **Liens and Encumbrances.** Keep the Mortgaged Property and Improvements and all other assets of Borrower free from all liens and encumbrances except those contemplated by this Agreement or as shown in the commitment for title insurance approved by Lender; pay promptly all persons or entities supplying work or materials for any construction of Improvements; and immediately discharge, bond off or make other arrangements acceptable to Lender with respect to, any mechanic's, materialman's or other lien filed against the Mortgaged Property or the Borrower.

(b) **Taxes.** Pay promptly when due and before the accrual of penalties thereon all taxes, including all real and personal Mortgaged Property taxes and assessments levied or assessed against Borrower, the Mortgaged Property or Improvements, and provide Lender with receipted bills therefor if requested by Lender. Notwithstanding anything to the contrary contained in this Section 5.2, Borrower may lawfully contest any real or personal Mortgaged Property taxes and assessments provided Borrower complies with all procedures relating thereto and does not incur any penalties or fines.

(c) **Insurance.** Maintain in effect the Insurance required by this Agreement and the Security Instrument and notify Lender of any change in the status of any such insurance within ten (10) days of Borrower's receipt of notice of any such change; and name Lender as mortgagee and loss-payee with respect to all proceeds of property insurance pursuant to a mortgagee clause and lender loss payable clause and name Lender as an additional insured under the required liability insurance policy, each in form satisfactory to Lender. All policies must be issued by companies reasonably satisfactory to Lender and on policy forms satisfactory to Lender and Borrower shall provide Lender with ten (10) days notification prior to cancellation of any of the coverages required to be maintained.

(d) **Reports and Notices.** Notify Lender promptly of any litigation instituted or threatened against Borrower or any Guarantor, any deficiencies asserted or liens filed by the Internal Revenue Service against Borrower, Guarantor, the Mortgaged Property or the Improvements, any audits of any Federal or State tax return of Borrower or Guarantor and the results of any such audit, condemnation or similar proceedings with respect to any of the Mortgaged Property or Improvements, any proceeding seeking to enjoin the intended use of the Improvements, any changes in governmental requirements pertaining to the Mortgaged Property or Improvements, utility availability or anticipated costs of completion, and any other matters which could reasonably be expected to adversely affect Borrower's ability to perform its obligations under this Agreement.

(e) **Books and Records.** Maintain complete and accurate account books and records with respect to the Loan, the Mortgaged Property, which books and records shall reflect the consistent in accordance with GAAP, and make such books and records available at reasonable times for inspection and copying by Lender or its agent.

(f) **Access and Promotion.** Permit Lender and its agents to have access to the Mortgaged Property and Improvements at all reasonable times.

(g) **Indebtedness.** As to each person who has signed the Note, duly and promptly pay all Indebtedness to Lender according to the terms of this Agreement and the other Loan Documents, duly and promptly pay all other indebtedness of Borrower, and incur no other indebtedness whatsoever, except as otherwise expressly approved in writing by Lender in its discretion.

(h) **Future Financial and Operating Statements.** If requested, furnish to Lender within one hundred twenty (120) days after the end of each calendar year (or fiscal year with respect to any entity having a different fiscal year), and within forty-five (45) days after the end of each quarter, financial statements of Borrower for the year as of the end of such period. Each statement shall consist of a balance sheet and income statement. Upon completion of the Improvements and the commencement of business therein, and upon Lender's request, Borrower shall also provide Lender with a year-to-date operating statement and occupancy report of the Mortgaged Property on a monthly basis within twenty (20) days of the end of each calendar month. All financial statements, operating statements and the occupancy information shall be certified to be correct by the person or entity to which they pertain. If required by Lender on an annual basis or after the occurrence of an Event of Default, all financial statements for Borrower shall also be audited statements certified by a certified public accountant acceptable to Lender. Borrower shall also certify with delivery of each of its financial statements that:

(1) Borrower has complied with and is in compliance with all terms, covenants and conditions of this Agreement and other Loan Documents which are binding upon it;

(2) there exists no Default or Event of Default as defined in this Agreement or, if such is not the case, that one or more specified Defaults or Events of Default then exist; and

(3) the representations and warranties contained in this Agreement are true with the same effect as though made on the date of such certificate.


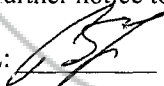
(i) **Maintain Existence.** If Borrower is an entity, except as otherwise expressly approved in writing by Lender in its discretion, it shall maintain its existence as a Single Purpose Entity, in good standing and duly qualified in the state where it was formed; permit no changes in the Regulations, Bylaws, Shareholder's Agreement or its Articles of Organization as they now exist without Lender's prior written approval; permit no changes or transfers in the ownership of the membership interests in Borrower except as specifically provided in this Agreement; not convey, transfer, or lease any or all of its Mortgaged Property, assets, or business to any other person or entity; not engage in any business enterprise other than as provided in the loan application for the Loan; not merge or consolidate with or into any other firm or corporation or enter into any partnership or joint venture with any other person or entity; and not make any extensions of credit, loans or advances to any other person or entity, except ordinary trade payables which are collected in the normal course of business. Borrower shall not make any change, amendment or modification to its organizational documents which could result in it not being a Single Purpose Entity.

(j) **Comply with Other Loan Documents.** Perform all its obligations under the Note (as to those persons signing it), Security Instrument, and all other Loan Documents.

(k) **Appraisals.** Upon Lender's request, Borrower shall permit the Lender, or its agents, employees or independent contractors, to enter upon and appraise the Mortgaged Property at any time and from time to time. Borrower shall cooperate with and provide any information requested in connection with such appraisals and reimburse Lender for the cost of any such appraisals, but not in excess of once per year starting with the date of this Agreement. At the time of this Agreement Lender determined the initial loan-to-value ratio (the sum of this loan plus any senior loans on a Mortgaged Property divided by its appraised value) (the "Initial LTV") for the Mortgaged Property to be:

Mortgaged Property Address	Initial LTV	Default LTV
161 Kahle Drive, Stateline, NV 89449	65%	80%
	0%	0%

If, after a reappraisal of a Mortgaged Property, the Initial LTV as set forth above exceeds the Default LTV (computed by then same method) set forth above (such event an "Appraisal Default"), the Appraisal Default shall be an Event of Default under this Agreement, the Note and all Security Instruments, enabling Lender, on 30 days written notice to Borrower, to require that the Loan principal balance be paid down to reduce the loan-to-value ratio of the Mortgaged Property to below the Default LTV for that property. If Borrower fails to timely do so, Lender may proceed without further notice to exercise its remedies for an Event of Default.

INITIAL:  INITIAL: 

(l) **Other Acts.** Upon Lender's request, execute and deliver to Lender all other documents and perform all other acts which Lender reasonably deems necessary or appropriate to perfect or protect its security for the Loan.

EVENTS OF DEFAULT

6. Events of Default.

The occurrence of any of the events listed in this Article shall constitute an "Event of Default" under this Agreement.

(a) **Breach of Indebtedness.** Failure of Borrower to make any payment of interest, principal, impound or any other Indebtedness due, when and as due, whether by acceleration or otherwise, under the terms of the Note, Security Instrument, this Agreement, or any other Loan Document, subject to any applicable grace or cure period provided in such documents.

(b) **Non-Monetary Obligations.** Failure of Borrower to perform any non-monetary obligation in the Note, Security Instrument or this Agreement or breach of any representation, warranty or covenant in this

Agreement, the Note or Security Instrument or other Loan Documents, subject to any applicable grace or cure period provided in such documents, including but not limited to an Appraisal Default.

(c) **Assignment or Conveyance.** Assignment or attempted assignment by Borrower of this Agreement, any rights hereunder, or any Advance to be made hereunder, or the conveyance, lease, mortgage, or any other alienation or encumbrance of the Mortgaged Property or Improvements or any interest therein (as further set forth in the Security Instrument) without the prior written consent of Lender, except as otherwise permitted herein. Borrower may enter into an agreement for such assignment or conveyance, provided that any such agreement requires as a condition to closing that the Loan be paid in full and the Loan is, in fact, paid in full upon the closing of such assignment or conveyance.

(d) **Voluntary Insolvency Proceedings.** The filing by the Borrower or any Guarantor of a voluntary petition in bankruptcy or the Borrower's or Guarantor's adjudication as a bankrupt or insolvent, or the filing by the Borrower or the Guarantor of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the Borrower's or Guarantor's seeking or consenting to or acquiescence in the appointment of any trustee, receiver or liquidator of the Borrower or Guarantor or of all or any substantial part its or his property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or the making of any general assignment for the benefit of creditors or the admission in writing by the Borrower or the Guarantor of its or his inability to pay its or his debts generally as they become due.

(e) **Involuntary Insolvency Proceedings.** The entry by a court of competent jurisdiction of an order, judgment, or decree approving a petition filed against the Borrower or any Guarantor seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of 30 days (whether or not consecutive) from the date of entry thereof, or the appointment of any trustee, receiver or liquidator of the Borrower or any Guarantor or of all or any substantial part of its or his property or of any or all of the rents, revenues, issues, earnings, profits or income thereof which appointment shall remain unvacated and unstayed for an aggregate of 30 days (whether or not consecutive).

(f) **Transfer.** Except as otherwise permitted herein, the transfer of Borrower's interest in, or rights under this Agreement by operation of law or otherwise, including, without limitation, such transfer by Borrower as debtor in possession under the Bankruptcy Code, or by a trustee for Borrower under the Bankruptcy Code, to any third party, whether or not the obligations of Borrower under this Agreement are assumed by such third party.

(g) **Foreclosures or Liens.** The institution of a foreclosure action against the Mortgaged Property or Improvements or any part thereof, or the filing of a lien against the Mortgaged Property or Improvements or any part thereof, which is not removed of record or dismissed within 30 days after Borrower is notified by Lender or otherwise of such filing, unless Borrower has made arrangements satisfactory to Lender with respect to such lien and no foreclosure or other possessory action against the Mortgaged Property or Improvements has been commenced.

(h) **Casualty Loss.** Substantial damage to, or partial or total destruction of, the Improvements by fire or other casualty such that, in the determination of Lender, the Improvements will not be restored, rebuilt and completed on or before or before the Date of Maturity of the Loan.

(i) **Misrepresentation.** If any certificate, statement, representation, warranty or audit heretofore or hereafter furnished by or on behalf of Borrower or any Guarantor pursuant to or in connection with this Agreement or otherwise (including, without limitation, representations and warranties contained herein) or as an inducement to Lender to extend any credit to or to enter into this or any other agreement with Borrower proves to have been false in any material respect at the time as of which the facts therein set forth were stated or certified or to have omitted any substantial contingent or unliquidated liability or claim against Borrower or the Guarantor or if on the date of execution of this Agreement there shall have been any materially adverse change in any of

the facts previously disclosed by any such certificate, statement, representation, warranty or audit, which change shall not have been disclosed to Lender at or prior to the time of such execution.

(j) **Failure to Perform Obligations.** Failure by Borrower to perform or observe any other term, condition or covenant herein which failure is not cured within any cure period set forth in the Note or Security Instrument.

(k) **Defaults Pursuant to Loan Documents.** Any "Event of Default" pursuant to (and as defined in) any other Loan Document.

(l) **Senior Lien Access.** Failure to give Lender access to and/or information requested by Lender to verify that any senior liens, encumbrances or charges are current and in good standing. Borrower shall provide such information within 5 calendar days of a written request from Lender.

(m) **Cross-Default.** Cross-Default. Any default under the terms of any loan agreement, promissory note, deed of trust, mortgage, lease, conditional sale contract or other agreement, document or instrument evidencing, governing or securing any indebtedness owing by Borrower or any Affiliate of Borrower to Lender or any Affiliate of Lender; shall, at Lender's option, constitute an Event of Default under this Agreement.

Notwithstanding anything contained in the Loan Documents to the contrary, any Loan sold, participated, or otherwise transferred to a third party shall not be cross-defaulted or cross-collateralized with any other loan not sold or transferred to the same third party or its Affiliates. The following definitions shall apply to this Section:

"Affiliate" means, with respect to any Person, any other Person that is directly or indirectly Controlling, Controlled by or under common Control with, such Person.

"Control" and derivative terms means the possession, directly or indirectly, and acting either alone or together with others, of the power or authority to direct or cause the direction of the management, material policies, material business decisions or the affairs of a Person, whether through the ownership of equity securities or interests, by contract or other means.

"Person" means any natural person, business, corporation, company, and or association, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, business enterprise, trust, government authority or other legal entity.

REMEDIES UPON DEFAULT

7. Remedies.

Upon the occurrence of any Event of Default specified in Article 6 hereof, regardless of any requirement that notice be given or a period of time elapse, Lender shall be under no obligation to make further Advances. Upon the occurrence and during the continuance of any Event of Default, Lender shall have the absolute right to refuse to disburse any funds hereunder and at its option and election and in its sole discretion to exercise alternatively or cumulatively any or all of the remedies set forth in the Note and Security Instrument.

MISCELLANEOUS

8. This Agreement Part of Note and Security Instrument.

The Security Instrument, the Note and other Loan Documents shall be deemed to incorporate this Agreement, and in the event that the Security Instrument and Note are duly assigned, this Agreement shall be considered assigned in like manner. In the event of a conflict between any of the provisions of the Security Instrument, Note, or any other Loan Document with this Agreement, the provisions of this Agreement shall control. An Event of Default pursuant to this Agreement shall constitute an "Event of Default" under the Security Instrument, Note and all other Loan Documents, and any "Event of Default" under the Security Instrument, Note or any other Loan Document shall constitute an Event of Default hereunder.

9. Exclusiveness.

This Agreement, the Security Instrument, the Note and any other Loan Documents are made for the sole protection of Borrower and Lender, and Lender's successors and assigns, and no other person or entity shall have

any rights hereunder. Lender agrees that in connection with any assignment by Lender, Lender will retain all of Lender's rights and obligations hereunder and under the Loan Documents and Borrower shall not be required to deal with any other person or entity other than Lender with respect to the Loan.

10. Notice.

Any notice required herein or by applicable law shall be deemed properly given (a) when personally delivered (to the person or department if one is designated below), (b) as of the delivery date shown on the return receipt when sent by United States Mail, certified or registered, postage prepaid, return receipt requested, or (c) one day after the date sent by FedEx or overnight United States Mail or other national overnight carrier, and addressed in each such case as set forth below:

If to Borrower to: 161 Kahle Drive LLC, a Nevada Domestic Limited Liability Company
5675 Meacham Street, Washoe Valley, NV 89704

If to the Lender to: Western Highland Fund II, LLC, a Nevada limited liability company
3170 US Highway 50, Suite 10, South Lake Tahoe, CA 96150

Any party may change his/its address to another single address by notice given as herein provided, except that any change of address must be actually received in order to be effective. Notwithstanding the foregoing, no notice shall be required if Lender is prevented from giving notice by bankruptcy or other applicable law, and the cure period, if any, shall commence with the date of such event rather than from the date of notice. Nothing herein shall require notice except as expressly set forth above or in the other Loan Documents.

11. Modification and Waiver.

No provisions of this Agreement shall be amended, waived or modified except by an instrument in writing signed by the party to be bound.

12. Materiality.

All representations and warranties made herein, in the Loan Documents and in other documents delivered in support of the Loan shall be deemed to have been material and relied on by Lender and shall survive the execution and delivery of this Agreement, the Security Instrument, the Note and other Loan Documents and the disbursements and Advances made pursuant to this Agreement.

13. Heading.

All descriptive headings of articles and sections in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

14. Severability.

Inapplicability or unenforceability of any provisions of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement.

15. Counterparts.

This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

16. Assignability.

Neither this Agreement, nor any rights or obligations hereunder, nor any Advance to be made hereunder, is assignable by Borrower. Borrower will not convey or encumber, or permit the conveyance or encumbrance of, the Mortgaged Property, Improvements or other Collateral, or any interest therein, without the prior written consent of Lender, which consent shall be in Lender's sole discretion. The rights of Lender under this Agreement are assignable in part or in full, and any assignee of Lender shall succeed to and be possessed of the rights of Lender hereunder to the extent of the assignment made, including the right to make Advances to Borrower or any approved assignee of Borrower in accordance with this Agreement.

17. No Agency Relationship.

Lender is not the agent or representative of Borrower.

18. Waiver.

No course of dealing and no delay or omission by Lender in exercising any right or remedy hereunder or with respect to any Indebtedness shall operate as a waiver thereof or of any other right or remedy, and no single or partial exercise thereof shall preclude any other or further exercise thereof or the exercise of any other right or remedy. Lender may remedy any Default or Event of Default by Borrower without waiving the Default or Event of Default remedied and without waiving any other prior or subsequent Default or Event of Default, and Lender shall be reimbursed by Borrower for any and all of its expenses in so remedying such Default or Event of Default. All rights and remedies of Lender hereunder are cumulative.

19. Costs and Expenses.

Borrower will bear all taxes, fees and expenses (including fees and expenses of counsel for Lender) in connection with the Loan, the Loan Documents (including any amendments hereafter made), the funding and administration of the Loan and the recording of any of the Loan Documents. If, at any time, an Event of Default occurs or Lender becomes a party to any suit or proceeding in order to protect its interests or priority in any Collateral for any of the Indebtedness or its rights under this Agreement or any of the Loan Documents, or if Lender is made a party to any suit or proceeding by virtue of the Loan, this Agreement or any Collateral for any Indebtedness and as a result of any of the foregoing, the Lender employs counsel to advise or provide other representation with respect to this Agreement, or to collect the balance of the Indebtedness, or to take any action in or with respect to any suit or proceeding relating to this Agreement, any of the other Loan Documents, any Collateral for any of the Indebtedness, the Borrower, or any Guarantor, or to protect, collect, or liquidate any of the Collateral for the Indebtedness, or attempt to enforce any security interest or lien granted to the Lender by any of the Loan Documents, then in any such events, all of the attorney's fees arising from such services, including fees on appeal and in any bankruptcy proceedings, and any expenses, costs and charges relating thereto shall constitute additional Indebtedness of Borrower to the Lender payable on demand of the Lender. Without limiting the foregoing, Borrower has undertaken the obligation for payment of, and shall pay, all recording and filing fees, revenue or documentary stamps or taxes, intangibles taxes, transfer taxes, recording taxes and other taxes, expenses and charges payable in connection with this Agreement, any of the Loan Documents, the Indebtedness, or the filing of any financing statements or other instruments required to effectuate the purposes of this Agreement, and should Borrower fail to do so, Borrower agrees to reimburse Lender for the amounts paid by Lender, together with penalties or interest, if any, incurred by Lender as a result of underpayment or nonpayment. This Section shall survive repayment of the remaining Indebtedness.

20. Choice of Law; Governing Law; Jurisdiction and Venue.

THIS AGREEMENT WAS NEGOTIATED IN THE STATE OF LENDER'S RESIDENCE OR PRINCIPAL PLACE OF BUSINESS (the "STATE") AND WAS ENTERED INTO IN SUCH STATE. THE APPLICATION FOR THE LOAN WAS SUBMITTED TO AND UNDERWRITTEN BY LENDER IN THE STATE. THE TRANSACTION SUBJECT TO THIS AGREEMENT WAS CLOSED THROUGH LENDER'S OR LENDER'S BROKER IN THE STATE AND THE PROCEEDS OF THE NOTE WERE OR WILL BE DISBURSED FROM THE STATE, AND ALL PAYMENTS UNDER THE NOTE ARE TO BE MADE TO THE STATE, WHICH STATE THE PARTIES AGREE HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY, AND IN ALL RESPECTS, INCLUDING WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT SHALL BE PERFORMED IN THE STATE. THIS AGREEMENT AND THE OBLIGATIONS ARISING HEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY, ENFORCEMENT AND FORECLOSURE OF THE LIENS AND SECURITY INTERESTS CREATED UNDER THE MORTGAGE SHALL BE GOVERNED BY AND

CONSTRUED ACCORDING TO THE LAW OF THE STATE WHERE THE COLLATERAL IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE SHALL GOVERN THE VALIDITY AND ENFORCEABILITY OF ALL LOAN DOCUMENTS, AND THE DEBT OR OBLIGATIONS ARISING HEREUNDER AND THEREUNDER. SUBJECT TO ANY CONTRARY PROVISION IN ANY COMMERCIAL ARBITRATION AGREEMENT, BORROWER AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING DIRECTLY OR OTHERWISE IN CONNECTION WITH, OUT OF, RELATED TO, OR FROM THIS AGREEMENT SHALL BE LITIGATED, ONLY IN . SUBJECT TO ANY CONTRARY PROVISION IN ANY COMMERCIAL ARBITRATION AGREEMENT, BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE DESIGNATED COURT(S) IN SAID COUNTY AND STATE.

21. Waiver of Jury Trial.

BORROWER HEREBY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (i) ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, THE LOAN DOCUMENTS OR THE LOAN, OR (ii) IN ANY WAY CONNECTED WITH OR PERTAINING OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF LENDER AND/OR BORROWER WITH RESPECT TO THE LOAN DOCUMENTS OR IN CONNECTION WITH THIS AGREEMENT OR THE EXERCISE OF EITHER PARTY'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR OTHERWISE, OR THE CONDUCT OR THE RELATIONSHIP OF THE PARTIES HERETO, IN ALL OF THE FOREGOING CASES WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. BORROWER AGREES THAT LENDER MAY FILE A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED AGREEMENT OF BORROWER IRREVOCABLY TO WAIVE ITS RIGHTS TO TRIAL BY JURY AS AN INDUCEMENT OF LENDER TO MAKE THE LOAN, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER (WHETHER OR NOT MODIFIED HEREIN) BETWEEN BORROWER AND LENDER SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY UNLESS THE PARTIES HAVE EXECUTED AN AGREEMENT TO ARBITRATE.

22. REMIC Savings Clause.

Notwithstanding anything to the contrary in this Agreement, if the Loan is held by a “real estate investment conduit” (a “REMIC”) within the meaning of Section 860D of the Internal Revenue Code of 1986, as amended (the “Code”), and following the release of any Mortgaged Property the loan-to-value ratio of the value of the Mortgaged Property securing the loan is greater than 125% (based solely on the value of the real property and excluding personal property or going concern value, if any, as determined by Lender in its sole discretion, using any commercially reasonable method permitted to a REMIC under the Code) (such amount, the “REMIC LTV”), then Borrower shall pay down the principal balance of the Loan by an amount equal to the greater of (A) the amount of principal required to be paid pursuant to this Section and (B) the least of the following amounts: (1) if the released Mortgaged Property is sold in an arm’s length transaction with an unrelated third party, the net proceeds of such sale; or (2) the fair market value of the released Mortgaged Property at the time of the release, as determined by Lender in its sole discretion using any commercially reasonable method permitted to a REMIC under the Code; or (3) an amount such that the REMIC LTV does not increase due to the release.

23. No Oral Agreements.

THIS WRITTEN LOAN AGREEMENT AND THE LOAN DOCUMENTS EXECUTED IN CONNECTION HERewith REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

(signatures follow on next page)

IN WITNESS WHEREOF, the Borrower and the Lender have caused this Agreement to be executed as of the date first set forth above.

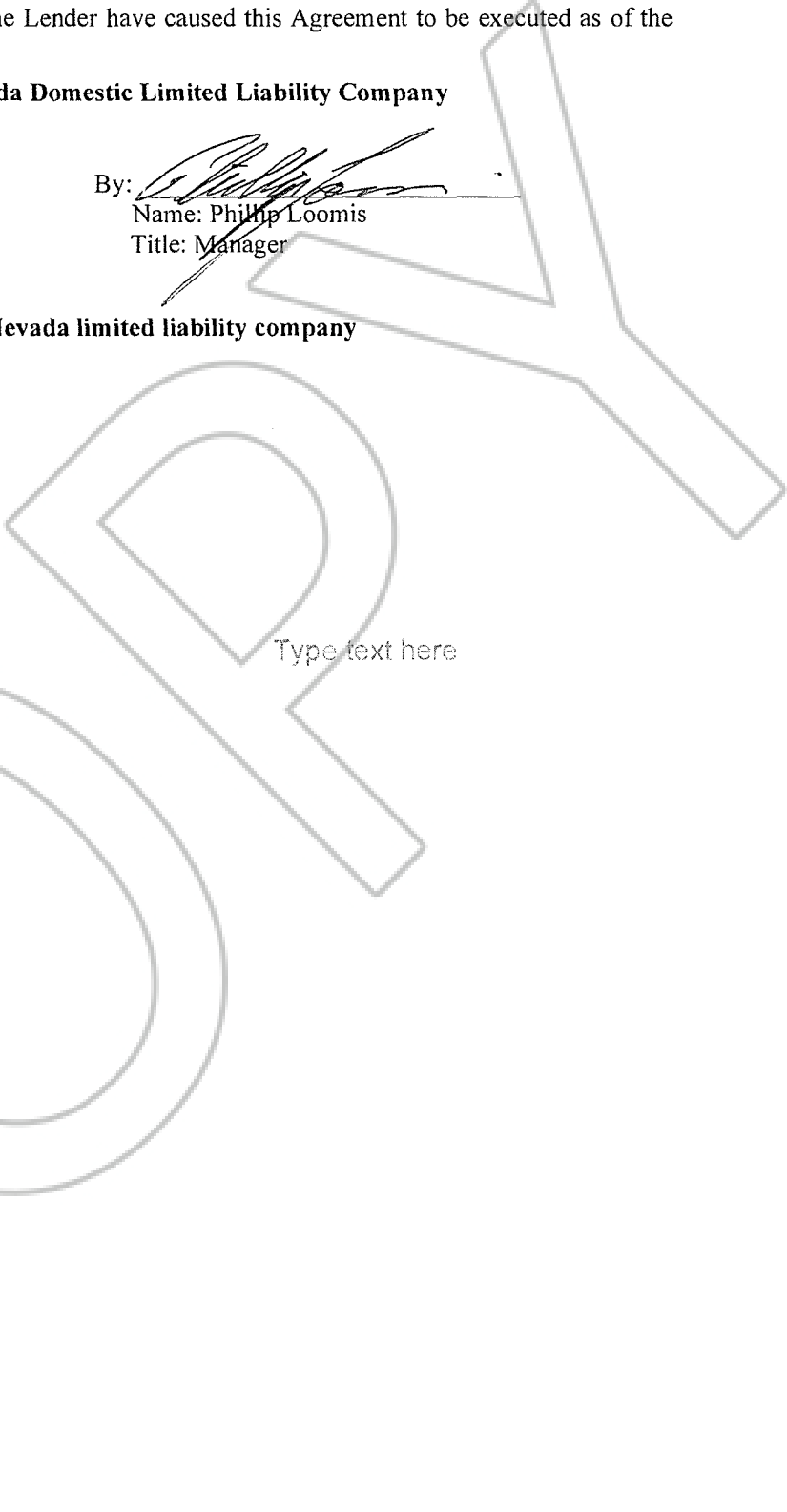
BORROWER: 161 Kahle Drive LLC, a Nevada Domestic Limited Liability Company

By: Jennell Peck
Name: Jennell Peck
Title: Manager

By: Phillip Loomis
Name: Phillip Loomis
Title: Manager

Lender: Western Highland Fund II, LLC, a Nevada limited liability company

By: Kelly Krolicki
Kelly Krolicki, Manager



Type text here

EXHIBIT "C"

SPECIAL PURPOSE ENTITY PROVISIONS

Borrower shall at all times be a Single Purpose Entity. As used herein, "Single Purpose Entity" shall mean a corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, or any other form of entity, which complies with the provisions set forth herein, including, without limitation, the requirements that Borrower has not and shall not:

(a) fail to be organized solely for the purpose of (i) owning the Property, (ii) entering into this Agreement or the other Related Documents to which it is a party, (iii) engaging in any activity that is incidental, necessary or appropriate to accomplish the foregoing;

(b) engage in any business or activity other than the ownership of the Property, and activities incidental thereto;

(c) own any material assets other than (i) the Property, and (ii) such incidental Personal Property as may be necessary for the operation of the Property;

(d) merge into or consolidate with any Person, to the fullest extent permitted by law, dissolve, terminate, wind up or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(e) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and, with respect to Borrower, qualification to do business in the state where the Property are located, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Borrower's organizational documents;

(f) own, form or acquire any subsidiary or make any investment in, any Person;

(g) commingle its assets with the assets of any of its equitable or beneficial owners, affiliates, principals or of any other Person nor fail to hold all of its assets in its own name;

(h) incur any Debt other than the Indebtedness and as otherwise permitted in the Loan Agreement which is paid when due;

(i) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due;

(j) fail to maintain its records, books of account and bank accounts separate and apart from those of the equitable or beneficial owners, principals and affiliates of Borrower, the affiliates of an equitable or beneficial owner or principal of Borrower, and any other Person or fail to maintain such books and records in the ordinary course of its business;

(k) except with respect to any contract or agreement expressly identified in the partnership agreement of Borrower, enter into any contract or agreement with any equitable or beneficial owner, principal or affiliate of Borrower, as the case may be, any Guarantor, or any equitable or beneficial owner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any equitable or beneficial owner, principal or affiliate of Borrower any Guarantor or any equitable or beneficial owner, principal or affiliate thereof;

(l) to the fullest extent permitted by law, seek the dissolution or winding up in whole, or in part, of Borrower;

(m) fail to make best efforts to correct any known misunderstandings regarding the separate identity of Borrower from any equitable or beneficial owner, principal or affiliate thereof or any other Person;

(n) guaranty or become obligated for the debts of any other Person or hold out its credit as being able to satisfy the debts of another Person; make any loans or advances to any third party, including any equitable or beneficial owner, principal or affiliate of Borrower or any equitable or beneficial owner, principal or affiliate thereof, nor buy or hold evidence of indebtedness issued by any other Person (other than cash or investment grade securities);

(o) fail to pay any taxes required to be paid by it under applicable law; nor fail to file its own tax returns, nor file a consolidated federal income tax return with any other entity, except to the extent that Borrower is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under any applicable law;

(p) fail to hold itself out to the public as a legal entity separate and distinct from any other Person;

(q) fail to conduct its business solely in its own name, mislead others as to the identity with which such other party is transacting business, or suggest that Borrower is responsible for the debts of any third party (including any equitable or beneficial owner, principal or affiliate of Borrower, or any equitable or beneficial owner, principal or affiliate thereof);

(r) fail to maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations; provided, however, that Borrower's limited partners shall not be obligated to make additional capital contributions beyond their initial capital contributions;

(s) hold itself out as or be considered as a department or division of (i) any equitable or beneficial owner, principal, or affiliate of Borrower, (ii) any affiliate of an equitable or beneficial owner or principal of Borrower, or (iii) any other Person;

(t) fail to maintain separate financial statements and accounting records, showing its assets and liabilities separate and apart from those of any other Person (except that Borrower may be included in consolidated financial statements of another Person, so long as (i) its separate assets shall be clearly indicated as such on such statement and such statements will indicate that Borrower's assets and credit are available to satisfy the debts and other obligations of any other Person, and (ii) such assets shall also be listed on Borrower's own separate balance sheet);

(u) fail to observe all applicable organizational formalities;

(v) fail to pay its own liabilities, including but not limited to the salaries of its own employees (if any are required), from its own funds;

(w) fail to maintain a sufficient number of employees (if any are required) in light of its contemplated business operations;

(x) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;

(y) fail to use separate stationery, invoices and checks bearing its own name;

(z) in the case of Borrower, pledge its assets for the benefit of any other Person, other than in connection with the Loan;

(aa) acquire the obligations or securities of any equitable or beneficial owner, principal or affiliate of Borrower, any Guarantor or any equitable or beneficial owner, principal or affiliate thereof;

(bb) fail to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity;

(cc) with respect to Borrower, have any obligation to indemnify its equitable or beneficial owners, officers, directors or affiliates, as the case may be, or have such an obligation only if it is fully subordinated to the

Loan and will not constitute a claim against it in the event that cash flow in excess of the amount required to pay the Loan is insufficient to pay such obligation;

(dd) fail, to the fullest extent permitted by law, to consider the interests of its creditors in connection with all actions;

(ee) have any of its obligations guaranteed by any equitable or beneficial owner, principal or affiliate of Borrower except Guarantor;

(ff) take for itself or cause any other entity to take any of the following actions without the prior unanimous written consent of its partners, members or managers, as applicable:

(gg) file or consent to the filing of any bankruptcy, insolvency or reorganization case or proceeding; institute any proceedings under any applicable insolvency law; file an answer or other pleading admitting or failing to contest the material allegations of a petition filed against it in any proceeding of this nature or otherwise seek any relief under any laws relating to the relief from debts or the protection of debtors generally, (ii) seek, consent to or acquiesce to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for itself or any other entity, (iii) make an assignment of its assets for the benefit of its creditors or an assignment of the assets of another entity for the benefit of such entity's creditors, or (iv) take any action in furtherance of the foregoing; and

(hh) fail to be formed and organized as a limited liability company under the laws of the state where it was formed.

For purposes of this Exhibit "C" only, an "affiliate" of a Person shall mean (i) any other Person directly or indirectly controlling, controlled by, or under direct or indirect common control with such Person, or (ii) any director, officer, employee, manager, child or spouse (or any trust for the benefit of a child or spouse) of any Person described in subsection (i) above.