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Fee: \$48.00 Page 1 of 10
RPTT: Recorded By: AE
Book- 261 Page- 0197

APN 003-144-03

APN _____

APN _____



Deed of Trust, Security Agreement, and Financing Statement

Title of Document

Affirmation Statement

I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does not contain the social security number of any person or persons. 9Per NRS 239B.030)

____ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording does contain the social security number of a person or persons as required by law:

(State specific law)

Denise Bray Title officer
Signature Title
Denise Bray

Signature

1/12/11
Date

Grantees address and mail tax statement:

Mountain America Federal Credit Union

7181 South Campus View Drive

West Jordan, Utah 84084



RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

MINDY MARTIN
MOUNTAIN AMERICA FEDERAL CREDIT UNION
7181 South Campus View Drive
West Jordan, Utah 84084
Parcel ID No. 003-144-03

DEED OF TRUST, SECURITY AGREEMENT, AND FINANCING STATEMENT

Deed of Trust, Security Agreement, and Financing Statement ("Deed of Trust") made as of January 7, 2011, between and among **MKH PROPERTIES CO., LLC**, a Utah limited liability company, as trustor (individually, "Trustor"), **MOUNTAIN AMERICA FEDERAL CREDIT UNION**, a federal credit union, as trustee ("Trustee"), and **MOUNTAIN AMERICA FEDERAL CREDIT UNION**, a federal credit union, as beneficiary (the "Beneficiary"). Trustor, Trustee, and Beneficiary are sometimes hereinafter referred to collectively as the "Parties" or, individually, as a "Party."

1. CONVEYANCE AND SECURED OBLIGATIONS.

1.1. Conveyance. For purposes of securing payment and performance of the Secured Obligations defined and described in Section 1.2 hereof, Trustor hereby irrevocably and unconditionally grants, transfers, conveys, warrants, and assigns to Trustee, in trust, with power of sale, for the benefit and security of Beneficiary, as beneficiary hereunder, subject to the terms and conditions of this Deed of Trust, all estate, right, title, and interest which Trustor now has or may later acquire in and to the following property (all or any part of such property, or any interest in all or any part of such property, as the context may require, is hereinafter referred to as the "Property"):

- (a) that certain real property located in the County of Lincoln, State of Nevada, and more particularly described in Exhibit A attached hereto, together with all existing and future easements and rights affording access to such real property (the "Land");
- (b) all buildings, structures, and improvements now located or later to be constructed on the Land (the "Improvements");
- (c) all existing and future appurtenances, privileges, easements, franchises, and tenements of the Land, including all minerals, oil, gas, other hydrocarbons, and associated substances, sulfur, nitrogen, carbon dioxide, helium, and other commercially valuable substances which may be in, under, or produced from any part of the Land, all development rights and credits, air rights, water, water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant), and water stock, and any land lying in the streets, roads, or avenues, open or proposed, in front of or adjoining the Land and Improvements;
- (d) all existing and future leases, subleases, subtenancies, licenses, occupancy agreements, and concessions (collectively, "Leases") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases, together with all rents, proceeds, issues, and profits arising therefrom or in any way associated therewith (collectively, "Rents");
- (e) all goods, materials, supplies, chattels, furniture, fixtures, equipment, and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy, or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches, and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration, and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;
- (f) all building materials, equipment, work in process, or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into, or installed in or about the Land or Improvements;
- (g) all of Trustor's interest in and to loan funds, whether disbursed or not, and any of Trustor's funds now or later to be held by or on behalf of Beneficiary;
- (h) all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments, and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Trustor with third parties (including all utility deposits), contract rights, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts, and letters of credit (other than letters of credit in favor of Beneficiary), which arise from or relate to



construction on the Land or to any business now or later to be conducted on the Land, or to the Land and Improvements generally;

(i) all proceeds, including all claims to and demands for such proceeds, of the voluntary or involuntary conversion of any of the Land, Improvements, or the other property described above into cash or liquidated claims, including proceeds of all present and future fire, hazard, or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements, or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud, or concealment of a material fact;

(j) all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory (collectively, "Books and Records");

(k) (i) all agreements heretofore or hereafter entered into relating to the construction, ownership, operation, management, leasing, or use of the Land or Improvements and any and all present and future amendments, modifications, supplements, and addenda to any of such items; (ii) any and all guarantees, warranties, and other undertakings (including payment and performance bonds) heretofore or hereafter entered into or delivered with respect to any of the items described in clause (i) above; (iii) all trade names, trademarks, logos, and other materials used to identify or advertise, or otherwise relating to the Land or Improvements; and (iv) all building permits, governmental permits, licenses, variances, conditional or special use permits, and other authorizations (collectively, "Permits") now or hereafter issued in connection with the construction, development, ownership, operation, management, leasing, or use of the Land or Improvements, to the fullest extent that the same or any interest therein may be legally assigned by Trustor; and

(l) all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

1.2 Secured Obligations. This Deed of Trust is made for the purpose of securing the following obligations (the "Secured Obligations") in any order of priority that Beneficiary may choose:

(a) Payment of all obligations at any time owing under a certain Non-Revolving Promissory Note (the "Note") of even date herewith, payable by Trustor as maker in the stated principal amount of Four Hundred Fifty Thousand and No/100 Dollars (\$450,000.00) to the order of Beneficiary; which Note matures and is due and payable as set forth in the Note; and

(b) Payment and performance of all obligations of Trustor under this Deed of Trust; and

(c) Payment and performance of all future advances and other obligations that Trustor or any successor in ownership of all or part of the Property may agree to pay and/or perform (whether as principal, surety, or guarantor) for the benefit of Beneficiary, when a writing evidences the Parties' agreement that the advance or obligation is to be secured by this Deed of Trust; and

(d) Payment and performance of all modifications, amendments, extensions, and renewals, however evidenced, of any of the Secured Obligations.

All persons who may have or acquire an interest in all or any part of the Property will be considered to have notice of, and will be bound by, the terms of the Secured Obligations and each other agreement or instrument made or entered into in connection with each of the Secured Obligations.

The Note, a certain Loan and Security Agreement (the "Loan Agreement"), and certain other documents (collectively, the "Other Loan Documents") being executed and delivered in connection with the Note and the Loan Agreement evidence a certain loan (the "Loan") from Beneficiary to Trustor (the Note, the Loan Agreement, and the Other Loan Documents are sometimes hereinafter referred to collectively as the "Loan Documents").

2. GRANT OF SECURITY INTEREST.

2.1 Security Agreement. The Parties acknowledge that some of the Property may be determined under applicable law to be personal property or fixtures. To the extent that any Property may be personal property, Trustor, as debtor, hereby grants Beneficiary, as secured party, a security interest in all such Property, to secure payment and performance of the Secured Obligations. This Deed of Trust constitutes a security agreement under the Uniform Commercial Code as in effect in the State of Utah (the "Code"), covering all such Property.

2.2 Financing Statements. If required by Beneficiary at any time or from time to time, Trustor shall execute one or more financing statements and such other documents which Beneficiary determines to be necessary or appropriate to perfect or continue the perfection of Beneficiary's security interest in any Property. Trustor shall pay all fees and costs that Beneficiary may incur in filing such documents in public offices and in obtaining such record searches as Beneficiary may reasonably require. In case Trustor fails to execute any financing statements or other documents for the perfection or continuation of any security interest, Trustor hereby appoints Beneficiary as



Trustor's true and lawful attorney-in-fact to execute any such documents on Trustor's behalf.

2.3 **Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under the Code, as amended or recodified from time to time, covering any of the Property which now is or later may become fixtures attached to the Land or the Improvements. The following addresses are the mailing addresses of Trustor, as debtor under the Code, and Beneficiary, as secured party under the Code, respectively:

Trustor: MKH PROPERTIES CO., LLC, c/o 4505 Wasatch Blvd. #350, Salt Lake City, Utah 84124
Beneficiary: Mountain America Federal Credit Union, 7181 So. Campus View Dr., West Jordan, Utah 84084

3. **REPRESENTATIONS, COVENANTS AND AGREEMENTS.**

3.1 **Good Title.** Trustor covenants that Trustor is lawfully seized of the Property, that the Property is unencumbered, and that Trustor has good right, full power, and lawful authority to convey and mortgage the same, and that Trustor will warrant and forever defend the Property and the quiet and peaceful possession of the same against the lawful claims of all persons whomsoever.

3.2 **Subrogation.** Beneficiary shall be subrogated to the liens of all encumbrances, whether released of record or not, which are discharged in whole or in part by Beneficiary in accordance with this Deed of Trust or with the proceeds of the Loan or any other loan secured by this Deed of Trust.

3.3 **Releases, Extensions, Modifications, and Additional Security.** From time to time, Beneficiary may perform any of the following acts without incurring any liability or giving notice to any person: (i) release any person liable for payment of any Secured Obligation; (ii) extend the time for payment, or otherwise alter the terms of payment, of any Secured Obligation; (iii) accept additional real or personal property of any kind as security for any Secured Obligation, whether evidenced by deeds of trust, mortgages, security agreements, or any other instruments of security; (iv) alter, substitute, release, or partially release, any Property securing the Secured Obligations; (v) consent to the making of any plat or map of the Property or any part of it; (vi) join in granting any easement or creating any restriction affecting the Property; or (vii) join in any subordination or other agreement affecting this Deed of Trust.

3.4 **Hazardous Materials.** Trustor hereby represents and warrants that: (a) the Property and all of the collateral or other security (collectively, the "Collateral") for the Loan, are not now and have never been used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process, or in any manner deal with "Hazardous Materials" (as such term is hereinafter defined), and that no Hazardous Materials have ever been installed, placed, or in any manner dealt with in connection with the Collateral or the Property, and (b) that no owner of the Collateral or the Property or any tenant, subtenant, occupant, prior tenant, prior subtenant, prior occupant, or person (collectively "Occupant") has received any notice or advise from any governmental agency or any Occupant with regard to Hazardous Materials on, from, or affecting the Collateral or the Property.

As used herein, the term "Hazardous Materials" shall include, without limitation, gasoline, petroleum products, explosives, radio-active materials, hazardous materials, hazardous wastes, hazardous or toxic substances, polychlorinated biphenyls, or related or similar materials, asbestos, or any material containing asbestos, or any other substance or material as may be defined as a hazardous or toxic substance by any federal, state, or local environmental law, ordinance, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Superfund Amendment and Reauthorization Act, the Hazardous Materials Transportation Act, as amended, the Resource Conservation and Recovery Act, as amended, the Federal Water Pollution Control Act, the Clean Air Act, and any other laws, rules, or regulations adopted and publications promulgated pursuant thereto.

Trustor covenants that the Collateral and the Property shall be kept free of Hazardous Materials, and shall not be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, process, or in any manner deal with Hazardous Materials, and Trustor will not cause or permit, as a result of any intentional or unintentional act or omission on the part of Trustor or any Occupant, the installation or placement of Hazardous Materials in or on the Collateral or the Property or a release of Hazardous Materials onto the Collateral or the Property or onto any other property, or suffer the presence of Hazardous Materials on the Collateral or the Property. Trustor shall comply with, and ensure compliance, by all Occupants, with all applicable federal, state, and local laws, ordinances, rules, or regulations with respect to Hazardous Materials, and shall keep the Collateral and the Property free and clear of any liens imposed pursuant to such laws, ordinances, rules, or regulations. In the event Trustor receives any notice or advise from any governmental agency or any Occupant with regard to Hazardous Materials on, from, or affecting the Collateral or the Property, Trustor shall immediately notify Beneficiary. Trustor shall thereafter conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Materials on, from, or affecting the Collateral or the Property in accordance with all applicable federal, state, and local laws, ordinances, rules, regulations, and policies.

Trustor shall protect, indemnify, and save harmless Beneficiary from and against all liabilities, losses,



obligations, claims, damages, penalties, causes of actions, costs, and expenses, including reasonable attorneys' fees, imposed upon or incurred by or asserted against Beneficiary and arising from any state of facts or circumstances existing prior to Beneficiary's acquiring title through foreclosure or deed-in-lieu of foreclosure or due to any action or inaction of Trustor by reason of: (a) ownership of the Collateral or the Property or any interest therein, (b) the presence, disposal, escape, seepage, leakage, spillage, discharge, emission, release, or threatened release of any Hazardous Materials on, from, or affecting the Collateral, the Property, or any other property, (c) any personal injury, including wrongful death or property damage arising out of or related to such Hazardous Materials, (d) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Materials, or (e) any violation of laws, orders, regulations, requirements, or demands which are based upon or in any way related to such Hazardous Materials.

The obligations of Trustor with respect to the foregoing representations, warranties, covenants, and indemnifications relating to Hazardous Materials shall survive any termination, satisfaction, assignment, judgment of foreclosure, foreclosure by private sale, or delivery of deed-in-lieu of foreclosure with respect to this Deed of Trust, the Loan Documents, or any of the Collateral or the Property.

4. DEFAULTS AND REMEDIES.

4.1 Default. Any breach, default, or Event of Default defined in the Note or any of the other Loan Documents executed in connection therewith, shall constitute a breach, default, and Event of Default hereunder, and any breach, default, or Event of Default hereunder shall constitute a breach, default, or Event of Default under the Note and all of the other Loan Documents. In addition, the following shall constitute a breach, default, and Event of Default hereunder, under the Note, and under all of the other Loan Documents:

(a) Trustor fails in the timely payment or performance of any obligation, covenant, agreement, or liability created by or occurring under or in connection with, this Deed of Trust; or

(b) Transfer of the Property or a beneficial interest in Trustor. Except in connection with an assignment and assumption which is authorized pursuant to the terms of the Note, if all or any part of the Property, or any interest therein, is sold or transferred by Trustor, or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person or persons but is a limited partnership, limited liability company, limited liability partnership, general partnership, limited partnership, trust, or other legal entity, without Beneficiary's prior written consent (including a transfer by devise, descent, or by operation of law upon death or otherwise), which consent may be withheld by Beneficiary in Beneficiary's sole discretion.

4.2 Remedies. At any time after a breach, default, or Event of Default, Beneficiary shall be entitled to invoke any and all of the rights and remedies described below, in addition to all other rights and remedies available to Beneficiary at law or in equity. All of such rights and remedies shall be cumulative, and the exercise of any one or more of them shall not constitute an election of remedies.

(a) Acceleration. Beneficiary may declare any or all of the Secured Obligations to be due and payable immediately.

(b) Receiver. Beneficiary shall, as a matter of right, without notice and without giving bond to Trustor or anyone claiming by, under or through Trustor, and without regard for the solvency or insolvency of Trustor or the then value of the Property, to the extent permitted by applicable law, be entitled to have a receiver appointed for all or any part of the Property and the Rents, with the rights and powers referenced below and such other rights and powers as the court making such appointment shall confer, and Trustor hereby consents to the appointment of such receiver and shall not oppose any such appointment. Such receiver shall have all powers and duties prescribed by applicable law, all other powers which are necessary or usual in such cases for the protection, possession, control, management, and operation of the Property, and such rights and powers as Beneficiary would have upon entering and taking possession of the Property under subsection (c) below.

(c) Entry. Beneficiary, in person, by agent, or by court-appointed receiver, may enter, take possession of, manage, and operate all or any part of the Property, and may also do any and all other things in connection with those actions that Beneficiary may in Beneficiary's sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: taking and possessing all of Trustor's or the then owner's Books and Records; entering into, enforcing, modifying, or canceling leases on such terms and conditions as Beneficiary may consider proper; obtaining and evicting tenants; fixing or modifying Rents; collecting and receiving any payment of money owing to Trustor; completing any unfinished construction; and/or contracting for and making repairs and alterations. If Beneficiary so requests, Trustor shall assemble all of the Property that has been removed from the Land and make all of it available to Beneficiary at the site of the Land. Trustor hereby irrevocably constitutes and appoints Beneficiary as Trustor's attorney-in-fact to perform such acts and execute such documents as Beneficiary in Beneficiary's sole discretion may consider to be appropriate in connection with taking these measures, including endorsement of Trustor's name on any instruments.

(d) Cure; Protection of Security. Beneficiary may, but shall not be required to, cure any



breach, default, or Event of Default of Trustor, and if Beneficiary chooses to do so in connection with any such cure, Beneficiary may also enter the Property and/or do any and all other things which Beneficiary may in its sole discretion consider necessary and appropriate to protect the security of this Deed of Trust. Such other things may include: appearing in and/or defending any action or proceeding which purports to affect the security of, or the rights or powers of Beneficiary under, this Deed of Trust; paying, purchasing, contesting, or compromising any encumbrance, charge, lien, or claim of lien which in Beneficiary's sole judgment is or may be senior in priority to this Deed of Trust, such judgment of Beneficiary to be conclusive as between the Parties; obtaining insurance and/or paying any premiums or charges for insurance; otherwise caring for and protecting any and all of the Property; and/or employing counsel, accountants, contractors, and other appropriate persons to assist Beneficiary. Beneficiary may take any of the actions permitted under this Section 4.2(d) either with or without giving notice to any person. Any amounts expended by Beneficiary under this Section 4.2(d) shall be secured by this Deed of Trust.

(e) Uniform Commercial Code Remedies. Beneficiary may exercise any or all of the remedies granted to a secured party under the Code.

(f) Foreclosure: Lawsuits. Beneficiary shall have the right, in one or several concurrent or consecutive proceedings, to foreclose the lien hereof upon the Property or any part thereof, for the Secured Obligations, or any part thereof, by any proceedings appropriate under applicable law. Beneficiary or its nominee may bid and become the purchaser of all or any part of the Property at any foreclosure or other sale hereunder ("Foreclosure Sale"), and the amount of Beneficiary's successful bid shall be credited to the Secured Obligations. Without limiting the foregoing, Beneficiary may proceed by a suit or suits in law or equity, whether for specific performance of any covenant or agreement herein contained or contained in the Note, or in aid of the execution of any power herein granted, or for any foreclosure under the judgment or decree of any court of competent jurisdiction, or for damages, or to collect the indebtedness secured hereby, or for the enforcement of any other appropriate legal, equitable, statutory, or contractual remedy. Beneficiary may sell the Property at public auction in one or more parcels, at Beneficiary's option, and convey the same to the purchaser in fee simple, Trustor to remain liable for any deficiency.

(g) Other Remedies. Beneficiary may exercise all rights and remedies contained in any other instrument, document, agreement, or other writing heretofore, concurrently, or in the future executed by Trustor or any other person or entity in favor of Beneficiary in connection with the Secured Obligations or any part thereof, without prejudice to the right of Beneficiary thereafter to enforce any appropriate remedy against Trustor. Beneficiary shall have the right to pursue all remedies afforded to a Beneficiary under applicable law, and shall have the benefit of all of the provisions of such applicable law, including all amendments thereto which may become effective from time to time after the date hereof. In the event any provision of such statutes which is specifically referred to herein may be repealed, Beneficiary shall have the benefit of such provision as most recently existing prior to such repeal, as though the same were incorporated herein by express reference.

(h) Power of Sale for Personal Property. Under this power of sale, Beneficiary shall have the discretionary right to cause some or all of the Property which constitutes personal property, to be sold or otherwise disposed of in any combination and in any manner permitted by applicable law. For purposes of this power of sale, Beneficiary may elect to treat as personal property any property which is intangible or which can be severed from the Land or Improvements without causing structural damage. If it chooses to do so, Beneficiary may dispose of any personal property in any manner permitted by Article 9 of the Code, including any public or private sale, or in any manner permitted by any other applicable law.

(i) Single or Multiple Foreclosure Sales. If the Property consists of more than one lot, parcel, or item of property, Beneficiary may:

(i) designate the order in which the lots, parcels, and/or items shall be sold or disposed of or offered for sale or disposition; and

(ii) if it chooses to have more than one Foreclosure Sale, Beneficiary at its option may cause the Foreclosure Sales to be held simultaneously or successively, on the same day, or on such different days and at such different times and in such order as it may deem to be in its best interests. No Foreclosure Sale shall terminate or affect the liens of this Deed of Trust on any part of the Property which has not been sold, until all of the Secured Obligations have been paid in full.

4.3 Application of Foreclosure Sale Proceeds. The proceeds of any Foreclosure Sale shall be applied in the following manner:

(a) First, to pay the portion of the Secured Obligations attributable to the expenses of sale, costs of any action, and any other sums for which Trustor is obligated to reimburse Beneficiary hereunder, under the Note, in connection with the Loan, or under any of the Loan Documents;

(b) Second, to pay the portion of the Secured Obligations attributable to any sums expended or advanced by Beneficiary under the terms of this Deed of Trust which then remain unpaid;



(c) Third, to pay all other Secured Obligations in any order and proportions as Beneficiary in its sole discretion may choose; and

(d) Fourth, to remit the remainder, if any, to the person or persons entitled thereto.

5. **RELEASE OF LIEN.**

If Trustor shall fully pay and perform all of the Secured Obligations and comply with all of the other terms and provisions hereof and the Note to be performed and complied with by Trustor, then Beneficiary shall release this Deed of Trust and the lien thereof by proper instrument upon payment, performance, and discharge of all of the Secured Obligations and payment by Trustor of any filing fee in connection with such release.

6. **MISCELLANEOUS PROVISIONS.**

6.1 **Notice.** Any notice, demand, request, or other communication which any Party hereto may be required or may desire to give hereunder shall be in writing, addressed as follows and shall be deemed to have been properly given if hand delivered, if sent by reputable overnight courier (effective the business day following delivery to such courier) or if mailed (effective two business days after mailing) by United States registered or certified mail, postage prepaid, return receipt requested:

If to Trustor: **MKH PROPERTIES CO., LLC**
c/o 4505 Wasatch Blvd. #350
Salt Lake City, Utah 84124

If to Beneficiary: **MOUNTAIN AMERICA FEDERAL CREDIT UNION**
7181 South Campus View Drive
Salt Lake City, Utah 84084
Attn: David L. Poulson, Vice President, Commercial Real Estate

or at such other address as the Party to be served with notice may have furnished in writing to the Party seeking or desiring to serve notice as a place for the service of notice. Notices given in any other fashion shall be deemed effective only upon receipt.

6.2 **Remedies Not Exclusive.** No action for the enforcement of the lien or any provision hereof shall be subject to any defense which would not be good and available to the Party interposing same in an action at law upon the Note. Beneficiary shall be entitled to enforce payment and performance of any of the Secured Obligations and to exercise all rights and powers under this Deed of Trust or other agreement or any laws now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by mortgage, deed of trust, pledge, lien, assignment, or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or other powers herein contained, shall prejudice or in any manner affect Beneficiary's right to realize upon or enforce any other security now or hereafter held by Beneficiary, it being agreed that Beneficiary shall be entitled to enforce this Deed of Trust and any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No waiver of any breach, default, or Event of Default of the Trustor hereunder shall be implied from any omission by Beneficiary to take any action on account of such breach, default, or Event of Default if such breach, default, or Event of Default persists or is repeated, and no express waiver shall affect any breach, default, or Event of Default other than the breach, default, or Event of Default specified in the express waiver and that only for the time and to the extent therein stated.

6.3 **Waiver of Statutory Rights.** To the extent permitted by law, Trustor hereby agrees that it shall not and will not apply for or avail itself of any appraisal, valuation, stay, extension, or exemption laws, or any so-called "Moratorium Laws," now existing or hereafter enacted, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust, but hereby waives the benefit of such laws. Trustor, for itself and all who may claim through or under Trustor, waives any and all right to have the property and estates comprising the Property marshaled upon any foreclosure of the lien hereof and agrees that any court having jurisdiction to foreclose such lien may order the Property sold as an entirety. Trustor hereby waives any and all rights of redemption from sale under the power of sale contained herein or any order or decree of foreclosure of this Deed of Trust on Trustor's behalf and on behalf of each and every person, except decree or judgment creditors of Trustor, acquiring any interest in or title to the Property subsequent to the date of this Deed of Trust.

6.4 **Estoppel Affidavits.** Trustor, within five (5) days after written request from Beneficiary, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Secured Obligations and stating whether or not any offset or defense exists against such Secured Obligations, and covering such other matters as Beneficiary may reasonably require.

6.5 **Merger.** No merger shall occur as a result of Beneficiary acquiring any other estate in or any other



lien on the Property unless Beneficiary consents to a merger in writing.

6.6 Binding on Successors and Assigns. This Deed of Trust and all provisions hereof shall be binding upon Trustor and all persons claiming under or through Trustor, and shall inure to the benefit of Beneficiary and its successors and assigns.

6.7 Captions. The captions and headings of various paragraphs of this Deed of Trust are for convenience only, and are not to be construed as defining or limiting the scope or intent of the provisions hereof.

6.8 Severability. If all or any portion of any provision of this Deed of Trust shall be held to be invalid, illegal, or unenforceable in any respect, then such invalidity, illegality, or unenforceability shall not affect any other provision hereof or thereof, and such provision shall be limited and construed as if such invalid, illegal, or unenforceable provision or portion thereof was not contained herein.

6.9 Effect of Extensions of Time and Amendments. If the payment of the Secured Obligations or any part thereof be extended or varied, or if any part of the security be released, all persons now or at any time hereafter liable therefor, or interested in the Property, shall be held to assent to such extension, variation, or release, and their liability and the lien and all provisions hereof shall continue in full force, the right of recourse, if any, against all such persons being expressly reserved by Beneficiary, notwithstanding such extension, variation, or release.

6.10 Applicable Law. This Deed of Trust shall be governed by and construed under the laws of Utah.

6.11 TIME IS OF THE ESSENCE. TIME IS OF THE ESSENCE with respect to each and every covenant, agreement, and obligation of Trustor under this Deed of Trust and the Note.

6.12 Recordation. Beneficiary is hereby expressly authorized to cause this Deed of Trust and any security instrument creating a lien or evidencing the lien hereof upon the Property, or any portion thereof, and each instrument of further assurance, to be filed, registered, or recorded in such manner and in such places as may be required by any present or future law in order to publish notice of and fully to protect the lien hereof upon, and the interest of Beneficiary in, the Property.

Trustor will pay all filing, registration, and recording fees and taxes, and all expenses incident to the preparation, execution, and acknowledgment of this Deed of Trust, any mortgage supplemental hereto, any security instrument with respect to the Property, and any instrument of further assurance, and all federal, state, county, and municipal stamp taxes, duties, impositions, assessments, and charges arising out of or in connection with the execution and delivery of the Note or this Deed of Trust.

6.13 Modifications. This Deed of Trust may not be changed or terminated except in writing signed by Trustor and Beneficiary. The provisions of this Deed of Trust shall extend and be applicable to all renewals, amendments, extensions, consolidations, and modifications of the Note and the Loan, and any and all references herein to the Note and the Loan shall be deemed to include any such renewals, amendments, extensions, consolidations or modifications thereof.

Trustor has executed this Deed of Trust as of the date first written above.

TRUSTOR: MKH PROPERTIES CO., LLC,
a Utah limited liability company

By: *[Signature]*
MARK O. HAROLDSEN, Manager

NOTARY PUBLIC CERTIFICATION

Heather M. Arellanes Fifth Judicial Circuit

Doc. Description: *Deed of Trust, Security Agreement and Loan Closing Statement*

No. of Pages: 8 Date of Doc. 1/7/2011

[Signature] / 1/7/2011
Notary Signature Date

STATE OF HAWAII
COUNTY OF KAUAI :ss

On this 7th day of January, 2011, the foregoing instrument was acknowledged before me by MARK O. HAROLDSEN, the Manager of MKH PROPERTIES CO., LLC, a Utah limited liability company.

[Signature]
NOTARY PUBLIC HEATHER M. ARELLANES

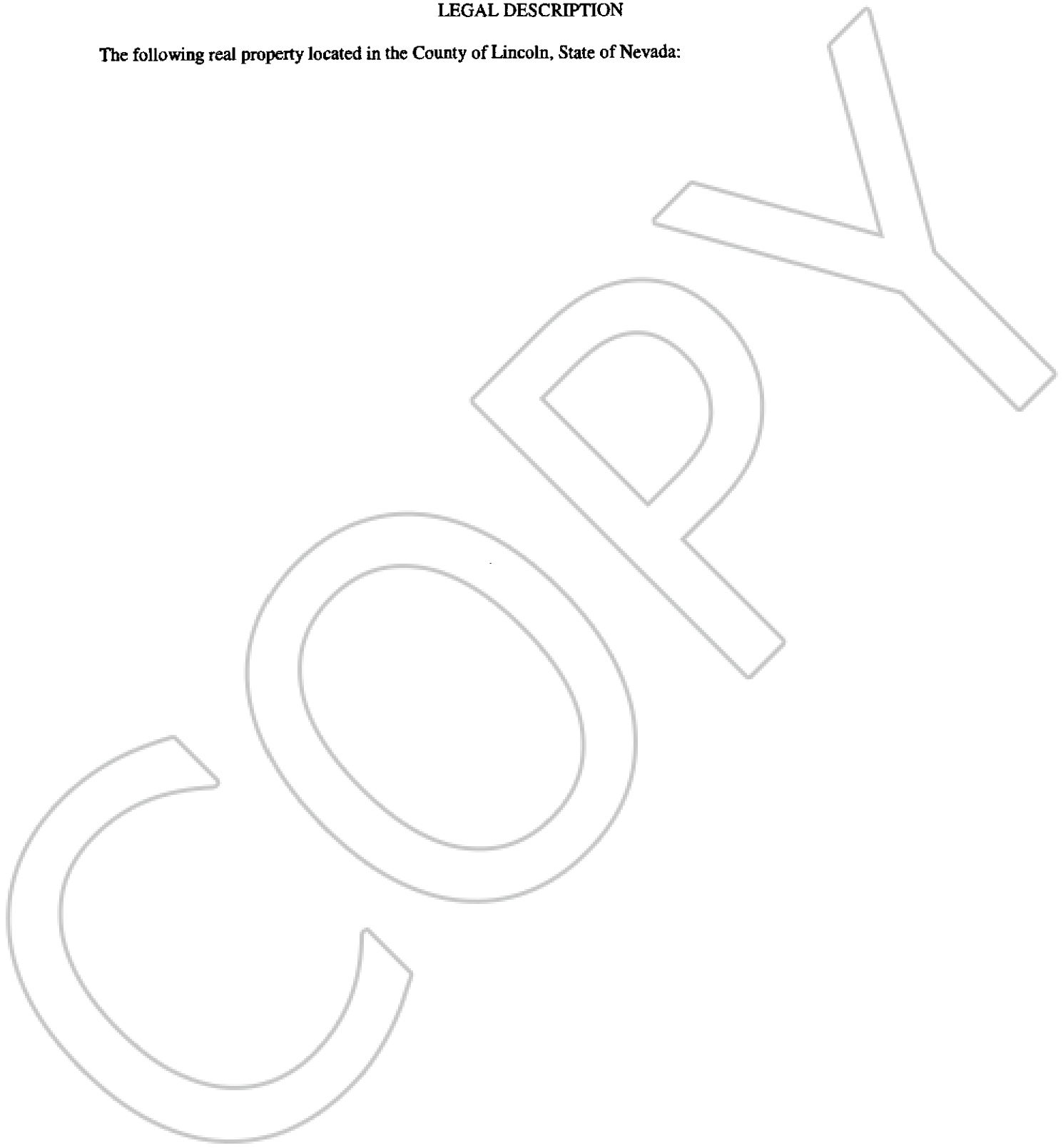
Notary Public, State of Hawaii
My commission expires 2/21/2014

[Signature]



**EXHIBIT A
LEGAL DESCRIPTION**

The following real property located in the County of Lincoln, State of Nevada:





0137583

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LEGAL DESCRIPTION
EXHIBIT A

Order No. 154580

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

Lots One (1) and Two (2) and South 37.42 feet of Lot Three (3) in Block D of the West End Addition to the City of Caliente, Lincoln County, Nevada as shown on the subdivision map thereof recorded October 6, 1926, in the Office of the County recorder of Lincoln County, Nevada in Book A of Plats, Page 44, Lincoln County, Nevada Records.

Tax ID No: 003-144-03

