

LINCOLN COUNTY, NV

2022-162049

\$37.00

Rec:\$37.00

03/15/2022 12:08 PM

FIRST AMERICAN TITLE INSURANCE COMPANY \$35 AK

OFFICIAL RECORD

AMY ELMER, RECORDER

Assessor's Parcel No. 003-053-03

NCS-1000088

Mail Tax Statements to:

minnie st. 2020 LLC
234 Shelter Valley Drive
Kalispell, Montana 59901
Attn: Gerald M. Fritts

WHEN RECORDED, RETURN TO:

Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

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

**(Including provision for future advances at the
option of Lender as governed by NRS 106.300
through 106.400, *et seq.*)**

(Bridge Loan)

This Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("Instrument") is effective as of March 10, 2022 (the "Closing Date"), and entered into by minnie st. 2020 LLC, a Nevada limited liability company ("Borrower"), to First American Title Insurance Company ("Trustee"), in favor of Bonneville Mortgage Company, a Utah corporation, together with its successors and/or assigns ("Lender").

Lender is making a loan to Borrower in the amount of One Million Three Hundred Thousand Dollars (\$1,300,000.00) (the "Loan"). The Loan is evidenced by the Multifamily Note effective as of the Closing Date, entered into by Borrower in favor of Lender, in the original principal amount of the Loan, and all renewals, extensions, modifications, and replacements thereof (the "Note"), which Note has a Maturity Date of not later than March 1, 2024, as set forth in Section 1.1.39 of this Instrument. The Loan will be advanced under a Construction Loan Agreement between Borrower and Lender effective as of the Closing Date (the "Loan Agreement").

In exchange for good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Defined Terms. When used in this Instrument, the following terms shall have the following meanings:

1.1.1 "538 Loan" means the construction and term loan from Lender to Borrower to finance the Improvements in the original principal amount of One Million Five Hundred Fifty Thousand Dollars (\$1,550,000.00), which 538 Loan shall be guaranteed by the USDA.

1.1.2 "Agency" means the State of Nevada Department of Business & Industry Housing Division, in its capacity as the designated agency of the State of Nevada to allocate state and federal tax credits, acting through any authorized representative.

1.1.3 "American Covenant" means American Covenant Senior Housing Foundation, Inc., a Georgia nonprofit corporation.

1.1.4 "Assignment of Contracts and Permits" means the Assignment of Contracts and Permits effective as of the Closing Date and entered into by Borrower in connection with the Loan.

1.1.5 "Assignment of Developer Rights" means the Assignment of Developer Rights effective as of the Closing Date and entered into between Borrower and Lender in connection with the Loan.

1.1.6 "Assignment of HAP Contract" means the Assignment of Housing Assistance Payments Contract effective as of the Closing Date and entered into by Borrower, for the benefit of Lender, in connection with the Loan.

1.1.7 "Assignment of Management Contract" means the Assignment of Management Contract effective as of the Closing Date and entered into between Borrower and Lender in connection with the Loan.

1.1.8 "Bankruptcy Code" means the United States Code, Title 11 (as the same may be amended or recodified from time to time).

1.1.9 "Business Day" means any day other than a Saturday, Sunday, or any other day on which Lender is not open for business.

1.1.10 "Carryover Allocation Agreement" means the agreement entered into between the Agency and Borrower, whereby the Agency has agreed to allocate federal tax credits under Section 42 of the Code for the Improvements in an amount acceptable to Lender, in its sole discretion.

1.1.11 "Closing Date" means the date of this Instrument set forth in the first paragraph on the first page of this Instrument.

1.1.12 "Code" means the Internal Revenue Code of 1986, as may be amended from time to time (or any corresponding provisions of any successor law).

1.1.13 "Collateral" means the property described in Section 2.1 of this Instrument as collateral for the Loan.

1.1.14 "Completion Guaranty" means the Unconditional Guaranty of Completion effective as of the Closing Date and entered into by Guarantor, for the benefit of Lender, in connection with the Loan.

1.1.15 "Consent to Assignment of HAP Contract" means the Consent to Assignment of HAP Contract as Security for Financing entered into by Borrower and Contract Administrator in connection with the Loan.

1.1.16 "Contract Administrator" means Washoe Affordable Housing Corporation, a Nevada nonprofit corporation.

1.1.17 "Current HAP Contract" means the Project-based Section 8 Housing Assistance Payments Full Mark-To-Market Renewal Contract beginning on April 1, 2022, between Borrower, HUD, and Contract Administrator.

1.1.18 "Developer" means American Covenant, as the developer of the Project.

1.1.19 "Environmental Compliance Certificate" means the Environmental Compliance Certificate and Indemnity Agreement effective as of the Closing Date and entered into between and among Borrower, Managing Member, Developer, and Guarantor, to and for the benefit of Lender, in connection with the Loan.

1.1.20 "Event of Default" has the meaning described in Section 11.1 of this Instrument.

1.1.21 "Guarantor" means, individually and collectively, American Covenant and Individual Guarantor.

1.1.22 "Guaranty" means, individually and collectively, the Payment Guaranty and Completion Guaranty.

1.1.23 "HAP Contract" means the Current HAP Contract and any subsequent Section 8 Housing Assistance Payments Contracts entered into between Borrower and Contract Administrator or HUD effecting the Mortgaged Property.

1.1.24 “Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could be friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling and any other material or substance now or in the future that (i) is defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic pollutant,” “contaminant,” or “pollutant” by or within the meaning of any Hazardous Materials Law, or (ii) is regulated in any way by or within the meaning of any Hazardous Materials Law. Hazardous Materials expressly exclude those substances routinely used in the construction, operation and maintenance of residential properties provided that such substances are used in accordance with applicable laws.

1.1.25 “Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials or the protection of human health or the environment and apply to Borrower or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, *et seq.*, the Toxic Substance Control Act, 15 U.S.C. Section 2601, *et seq.* the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, and the Hazardous Materials Transportation Act, 49 U.S.C. Section, 5101 *et seq.*, and their state analogs.

1.1.26 “HOME Loan” means the subordinate mortgage loan from the Agency to Borrower, secured by the Mortgaged Property, in the original principal amount of Four Hundred Thousand Dollars (\$400,000.00).

1.1.27 “HOME Loan Documents” means, collectively, the Promissory Note in the original principal amount of the HOME Loan, and the Deed of Trust and Assignment of Rents entered into by Borrower, in favor of the Agency, and all related loan documents executed by Borrower as a subordinate lien on the Mortgaged Property in connection with the HOME Loan, including, without limitation any restrictive covenants.

1.1.28 “Housing Assistance Payments” means payments received under the HAP Contract.

1.1.29 “Housing Assistance Payments Contract” means any contract between Borrower and Contract Administrator or HUD for the payment of Housing Assistance Payments.

1.1.30 “HUD” means the U.S. Department of Housing and Urban Development.

1.1.31 “Improvements” has the meaning set forth in Section 2.1.2 of this Instrument.

1.1.32 “Indebtedness” means the Principal Amount and all accrued interest under the Loan, together with any additional advances, if any, and any additional amounts advanced by Lender, if any, pursuant to the Loan Documents, including, without limitation, advances made under Section 3.1 of this Instrument.

1.1.33 “Individual Guarantor” means Timothy R. Birk, an individual and resident of the State of Montana.

1.1.34 “Investor Member” means USA Institutional Minnie Apartments LLC, a Delaware limited liability company, and its permitted successors and assigns.

1.1.35 “Land” has the meaning set forth in Section 2.1.1 of this Instrument.

1.1.36 “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, and all modifications, extensions or renewals.

1.1.37 “Letter of Credit” means the unconditional irrevocable letter of credit provided to Lender by Borrower, and any extensions thereof, in form and substance satisfactory to Lender, issued to Lender as “Beneficiary” by a financial institution satisfactory to Lender, in the amount of Five Hundred Thousand Dollars (\$500,000.00) to provide Lender with a credit enhancement in the event the Contractor fails to satisfactorily complete or carry on the work of the installation and construction of the Improvements in accordance with the Construction Contract.

1.1.38 “Loan Documents” means this Instrument, the Loan Agreement, Note, Pledge and Security Agreement, Security Agreement Regarding Deposit Accounts, Guaranty, UCC Financing Statement, UCC Fixture Filing, Environmental Compliance Certificate, Assignment of Developer Rights, Assignment of Contracts and Permits, Assignment of Management Contract, Assignment of HAP Contract, Consent to Assignment of HAP Contract, Letter of Credit, Solvency Certificate, together with all consents, agreements, and certificates attached as exhibits thereto, and all other documents, whether now or hereafter existing, executed in connection with the Loan.

1.1.39 “Maturity Date” means March 1, 2024, or September 1, 2024, if the Loan is extended pursuant to Section 5 of the Note, whereupon the Indebtedness and all accrued and unpaid interest shall be due and payable in accordance with the Note.

1.1.40 “Mortgaged Property” has the meaning set forth in Section 2.4 of this Instrument.

1.1.41 “Oak Leaf” means Oak Leaf Community Development LLC, a Delaware limited liability company.

1.1.42 “Oak Leaf Loan” means the subordinate mortgage loan from Oak Leaf to Borrower, secured by the Mortgaged Property, in the original principal amount of Seventy Thousand Dollars (\$70,000.00).

1.1.43 “Oak Leaf Loan Documents” means, collectively, the Promissory Note in the original principal amount of the Oak Leaf Loan, and the Multifamily Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing entered into by Borrower, in favor of Oak Leaf, and all related loan documents executed by Borrower as a subordinate lien on the Mortgaged Property in connection with the Oak Leaf Loan, including, without limitation any restrictive covenants.

1.1.44 “Operating Agreement” means Borrower’s Amended and Restated Operating Agreement dated as of March 1, 2022, entered into between Managing Member, Investor Member, and American Covenant Senior Housing, Inc., a Georgia nonprofit corporation, as “Withdrawing Member”, in a form acceptable to Lender in its sole discretion.

1.1.45 “Payment Guaranty” means the Payment Guaranty effective as of the Closing Date and entered into by Guarantor, in favor of Lender, in connection with the Loan.

1.1.46 “Pledge and Security Agreement” means the Pledge and Security Agreement effective as of the Closing Date and entered into between and among Borrower, Managing Member, and Lender, in connection with the Loan.

1.1.47 “Principal Amount” means One Million Three Hundred Thousand Dollars (\$1,300,000.00).

1.1.48 “Schedule of Title Exceptions” means the schedule of exceptions to coverage in the Title Policy and accepted by Lender contemporaneously with the execution of this Instrument.

1.1.49 “Security Agreement Regarding Deposit Accounts” means the Security Agreement Regarding Deposit Accounts effective as of the Closing Date and entered into between Borrower and Lender in connection with the Loan.

1.1.50 “Solvency Certificate” means the Solvency Certificate effective as of the Closing Date and executed by Borrower, Managing Member, Developer, and Guarantor in connection with the Loan.

1.1.51 “Title Policy” means the policy of title insurance described in Section 5.2 of the Loan Agreement.

1.1.52 “UCC Financing Statement” means, collectively, all UCC-1 Financing Statements and UCC-3 Financing Statement Amendments and/or Continuations filed in the office of the appropriate Secretary of State in connection with the Loan.

1.1.53 “UCC Fixture Filing” means the UCC-1 Financing Statement designated as a fixture filing and recorded in the official records of the county wherein the Land is located in connection with the Loan.

1.1.54 “USDA” means the United States Department of Agriculture, Rural Development.

ARTICLE 2 GRANT AND CONVEYANCE

2.1 General Grant. Borrower hereby irrevocably grants, conveys and assigns to Trustee, in trust for the benefit of Lender, with power of sale, the following described real property (the “Real Property”) located in Lincoln County, State of Nevada:

2.1.1 Land. All of the right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to the land located in Lincoln County, State of Nevada (the “Land”), described in Exhibit A attached hereto and incorporated herein by this reference.

2.1.2 Buildings, Improvements and Interests. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to: All (a) buildings, improvements, works, structures, facilities and fixtures, including any future additions to, and improvements and betterments now or hereafter constructed upon, and all renewals and replacements of, any of the foregoing, which are now or hereafter shall be constructed or affixed or constructively affixed to the Land, or to any portion of the Land (the “Improvements”); and (b) easements, licenses, streets, ways, alleys, roads, passages, rights-of-way, minerals, oil, gas and other hydrocarbon substances, and all as-extracted collateral as defined in the Uniform Commercial Code of the state where the Land is located, development rights, all development agreements, air rights, and rights relating to wind energy, solar rights and rights relating to solar energy, geothermal rights and rights relating to geothermal energy irrigation rights, water, water courses, water rights (including claims, decrees, permits, and licenses), and water stock (whether now owned or hereafter acquired by Borrower and whether arising by virtue of land ownership, contract or otherwise), of any kind and nature, relating to or in any way appurtenant or appertaining to the Land or to any portion of the Land.

2.1.3 Tenements, Hereditaments. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all of the tenements, hereditaments, rights, privileges, and appurtenances belonging, relating, or in any way appertaining to any of the Land or the Improvements, or any portion of the Land or the Improvements, or which shall hereafter in any way belong, relate, or in any way appertain thereto, whether now owned or hereafter acquired, and the reversion and reversions, remainder and remainders, and estates, rights, titles, interests, possessions, claims, and demands of every nature whatsoever, at law or in equity, which Borrower may have or may hereafter acquire in and to the Land, the Improvements, or any portion thereof.

2.1.4 Leases, Rents, Issues, Etc. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all leases and subleases of all or any portion of the Land or the Improvements now or hereafter existing or entered into, and all lease agreements and documents evidencing the same; and all right, title and interest of Borrower thereunder, including without limitation, all rents, subrents and other amounts received for use of all or any portion of the Land or the Improvements, including without limitation, any and all rental agreements and arrangements of any kind now owned or hereafter acquired, and all proceeds from such leases, rents, subrents, issues, royalties, security deposits, income and profits of and from the Land, the Improvements, or any portion thereof.

2.2 Security Interest. Borrower hereby assigns and grants to Lender a security interest in the following described property (collectively the "Personalty"), whether now or hereafter existing, and in which Borrower now has or hereafter obtains any right, title, estate or interest, but only to the extent of Borrower's ownership interest therein, together with all additions and accessions thereto and all rents and proceeds thereof:

2.2.1 Tangible Personal Property. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to: All (a) goods, inventory, specifically including, without limitation, materials, furnishings and supplies, whether stored on or off the Real Property, delivered to the Real Property for incorporation or use in any construction, renovation, operation or maintenance of the Real Property, supplies, furnishings, construction materials, equipment, vehicles, machinery, appliances, including attached and unattached appliances, and other tangible personal property and fixtures located in or upon the Land or the Improvements and used or useable in connection therewith, or to be used in the construction, reconstruction, remodeling, or repair of any of the Improvements now or hereafter located upon the Land; (b) furniture, fixtures and equipment as equipment is defined in the Nevada Uniform Commercial Code, as enacted in the State of Nevada pursuant to NRS 104.9101, *et seq.*, and as it may be amended or recodified from time to time, wherever located, and all related right, title and interest of Borrower, now owned or hereafter acquired or created, all proceeds and products of the foregoing and all additions and accessions to, replacements of, insurance or condemnation proceeds of, and documents covering any of the foregoing, all leases of any of the foregoing, and all rents, revenues, issues, profits and proceeds arising from the sale, lease, license, encumbrance, collection, or any other temporary or permanent disposition of any of the foregoing or any interest therein; (c) architectural, engineering, development, construction and construction cost guarantee contracts or bonds entered into in connection with the improvement of the Real Property, all plans and specifications, building or use permits, subdivision plats and any related subdivision development requirements and specifications prepared by the engineer and architect thereunder, relating to the construction, development, ownership or maintenance of the Real Property; (d) engineering reports, surveys, soil reports and other documents relating to the Land; (e) modifications, parts, accessories, and accessions to each and all of the foregoing and all renewals and replacements thereof; and (f) proceeds of each of the foregoing.

2.2.2 Permits, Names, Rights, Etc. All right, title interest and estate of Borrower, now owned or hereafter acquired, in and to: All (a) contracts, permits, franchises,

privileges, grants, consents, licenses, authorizations, and approvals heretofore or hereafter granted by the United States, by the State of Nevada, or by any departments or agencies thereof or any other governmental or public bodies, agencies or authorities, to or for the benefit of Borrower and utilized in connection with the Real Property or to be constructed thereon, to the extent the same are transferable and subject to all terms, covenants and conditions thereof and to applicable law; (b) names under or by which the Real Property may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all service marks, trademarks and goodwill in any way relating to Borrower's ownership and operation of the Real Property; (c) contracts, contract rights, rights to payment, general intangibles, documents, instructions, accounts, water stock arising in connection with Borrower's ownership, legal or equitable claims, judgments, and awards now or hereafter accruing to the benefit of Borrower respecting the Real Property, specifically including, without limitation, all architectural, development and construction contracts, and all construction cost guarantee contracts relating to the Real Property; (d) shares of stock, member interests, partnership interests, or other evidence of ownership of any part of the Real Property that is owned by Borrower in common with others; (e) documents and rights of membership in any owners' or members' association or similar group having responsibility for managing or operating any part of the Real Property; and (f) amendments, modifications, additions, accessions, substitutions, replacements and renewals to any of the foregoing and all proceeds of the foregoing, whether voluntary or involuntary, including without limitation, insurance proceeds.

2.2.3 Awards. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to: All (a) awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Real Property or any portion of the Real Property, now or hereafter situated thereon or any estate or easement in the Real Property (including any awards for change of grade of streets); (b) insurance policies and all proceeds of insurance paid on account of any partial or total destruction of the Improvements or any portion thereof; (c) causes of action and recoveries for any loss or diminution in the value of the Real Property; and (d) proceeds of each of the foregoing.

2.2.4 Plans and Utility Taps. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to: All Plans and any and all replacements, modifications, and amendments thereto and any and all contracts, agreements or commitments between Borrower and any utility company, water company or user association, or telephone company, to furnish electricity, natural gas or oil, telephone, sewer, water or other such services, or to provide hook-ups, connections, lines or other necessary taps to the Real Property. Borrower hereby irrevocably appoints Lender as Borrower's true and lawful attorney-in-fact to execute, acknowledge and deliver any instruments and to do and perform any act in the name and on behalf of Borrower necessary to maintain and continue all contracts, agreements or commitments with any such utility company and, otherwise, to perform all acts necessary to assure uninterrupted utility service to the Real Property. Such power is coupled with an interest.

2.2.5 Loan Proceeds. All right, title, interest and estate of Borrower, now owned or hereafter acquired, in and to all proceeds of the Loan made by Lender to Borrower for

construction of the Improvements which proceeds are held by Lender, whether or not disbursed, and all reserves, deferred payments, deposits, refunds, cost savings, and payments of any kind relating to the construction of the Improvements to secure any and all of Borrower's obligations to Lender.

2.2.6 Contracts. All right, title, interest and estate of Borrower, now owned or hereafter acquired, under any other contract, subcontract or agreement, for the construction and completion of the Improvements and all contracts and agreements which have been or shall hereafter be entered into relating to the construction, development, sale, lease, operation, or use of all or a portion of the Real Property, and all governmental licenses or permits obtained for the lawful construction of the Improvements.

2.2.7 Accounts. All accounts of Borrower, presently existing or hereafter arising, including all accounts as defined in the Uniform Commercial Code, as amended, established in connection with or by reason of Borrower's ownership, construction, development, sale, lease, operation or use of the Real Property, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, all as-extracted collateral (including accounts included in the term as-extracted collateral, as defined in the Uniform Commercial Code), and all proceeds thereof.

2.2.8 Documents. All documents of Borrower, presently existing or hereafter arising, including all documents as defined in the Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Borrower's ownership, construction, development, sale, lease, operation or use of the Real Property, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

2.2.9 Instruments. All instruments of Borrower, presently existing or hereafter arising, including all instruments as defined in the Uniform Commercial Code, as amended, arising from or issued or prepared in connection with Borrower's ownership, construction, development, sale, lease, operation or use of the Real Property, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof.

2.2.10 General Intangibles. All general intangibles of Borrower, including federal and state low income housing tax credits pertaining to the Mortgaged Property, presently existing or hereafter arising, including general intangibles as defined in the Uniform Commercial Code, including subsidy or similar payments received from any sources, including a governmental authority, including, without limitation, all carryover allocation agreements, state allocation agreements, state reservation agreements, energy and solar credits, housing assistance payments contracts made under Section 8 of the United States Housing Act of 1937 (42 U.S.C. Section 1437f) or in connection with any USDA or other federal or state government program; choses in action, proceeds, contracts, distributions, dividends, refunds, security deposits, judgments, insurance claims, any right to payment of any nature, intellectual property rights or

licenses, any other rights or assets of Borrower customarily or for accounting purposes classified as general intangibles, and all documentation and supporting information related to any of the foregoing, all rents, profits and issues thereof, and all proceeds thereof; provided, however, that federal and state low income housing tax credits are an inseparable benefit of ownership of the Real Property and therefore cannot be transferred except through a transfer of ownership of the Real Property.

2.3 Security Agreement. This Instrument constitutes a Security Agreement with respect to the Personalty, and Lender shall have all of the rights and remedies of a secured party under the Loan Documents and the Uniform Commercial Code as well as all other rights and remedies available at law or in equity. Borrower and Lender acknowledge their mutual intent that all security interests contemplated herein are given as a contemporaneous exchange for new value to Borrower, regardless of when advances to Borrower are actually made or when the Real Property is acquired.

2.4 Mortgaged Property. The Real Property and the Personalty are sometimes hereinafter collectively referred to as the "Mortgaged Property".

2.5 Fixture Filing. This Instrument is intended to be a fixture filing under Nevada Revised Statutes, Section 104.9502. The addresses of the secured party (Lender) and the debtor (Borrower) from which information may be obtained concerning this security interest granted hereunder are set forth in Section 12.1 of this Instrument. This Instrument is to be recorded in the real estate records in the County Recorder's office of the county in which the Real Property is located. Borrower is the record owner of the Real Property.

ARTICLE 3 OBLIGATIONS SECURED

3.1 Obligations Secured. This Instrument is given for the purpose of securing to Lender the repayment of the Note and all Indebtedness and all renewals, extensions and modifications of the Note and the Indebtedness, and the performance of all covenants and agreements of Borrower contained in the Loan Documents. The Indebtedness also includes (i) the payment of all sums expended and advanced by Trustee or Lender under the terms of this Instrument, the Loan Agreement, or any other Loan Document, and (ii) the payment and performance of any other note or obligation reciting that it is secured by this Instrument. Borrower expressly acknowledges its mutual intent with Lender that the security interest created by this Instrument secures any and all present and future debts, obligations, and liabilities of Borrower to Lender without any limitation whatsoever.

3.2 Future Advances. It is the intention of Borrower and Lender that: (i) this Instrument shall constitute an "instrument" (as defined in NRS 106.330 as amended and recodified from time to time) which secures "future advances" (as defined in NRS 106.320 as amended and recodified from time to time) and which is governed pursuant to NRS 106.300 through 106.400 as amended and recodified from time to time; (ii) the obligations secured hereby shall include the obligation of Borrower to repay "future advances" of "principal" (as

defined in NRS 106.345 as amended and recodified from time to time) outstanding at any one time; and (iii) the lien of this Instrument shall secure the obligation of Borrower to repay all such "future advances" with the priority set forth in NRS 106.370(1) as amended and recodified from time to time. Borrower acknowledges and agrees that the obligations of Lender to advance funds under the Loan in accordance with the terms and conditions of the Loan Agreement, are obligatory in nature and not subject to the provisions of NRS 106.300, *et seq.*

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

4.1 Property. Borrower represents and warrants to Lender as follows:

4.1.1 Fee Title. Borrower is the owner of fee simple marketable title in and to the Real Property.

4.1.2 Defense of Title. Borrower shall defend title to the Mortgaged Property against all claims and demands whatsoever.

4.1.3 Exceptions to Title. With the exception of such liens, matters created or permitted pursuant to or by the Loan Documents, and encumbrances that have been approved by Lender to appear as exceptions to coverage in the Title Policy and accepted by Lender contemporaneously with the execution of this Instrument (the "Schedule of Title Exceptions"), the Mortgaged Property is free and clear of all liens, claims, encumbrances, restrictions, encroachments and interests whatsoever in favor of any third party.

4.1.4 Lien Priority. With the exception of those matters identified in the Schedule of Title Exceptions, the lien created by this Instrument upon the Mortgaged Property is a good and valid second lien, free and clear of all liens, encumbrances and exceptions other than the 538 Loan. Notwithstanding anything to the contrary contained in this Instrument or any other Loan Document, the Pledge and Security Agreement in favor of Lender shall at all times during the term of the Loan be senior to any security interest granted to Lender under the 538 Loan and 538 Loan Documents, to the Agency under the HOME Loan and HOME Loan Documents, or to Oak Leaf under the Oak Leaf Loan Documents, in the Collateral identified in the Pledge and Security Agreement.

4.1.5 Hazardous Material. No Hazardous Materials have been stored, or improperly used, disposed of, discarded, dumped, or abandoned by any person or entity on, in or under the Land or the Improvements in violation of any Environmental Laws. Borrower has complied with all applicable federal, state and local laws, rules, ordinances and regulations relating to the storage, transportation, and disposal of Hazardous Materials on, in or under the Land or the Improvements.

4.1.6 Borrower Representations. Borrower's principal place of business is located in the State of Nevada. Borrower's state of organization is Nevada. Borrower's exact legal name is as set forth in the first paragraph of this Instrument.

4.2 Personalty. Borrower further represents and warrants to Lender as follows:

4.2.1 Owner of Personalty. Borrower is the owner, or upon acquisition thereof, will be the owner of the Personalty.

4.2.2 No Prior Liens. Except for the security interests granted Lender under the 538 Loan, the Personalty is, or upon acquisition will be, free and clear of all liens, claims, encumbrances, restrictions, charges, and security interests in favor of any third party except for the matters identified in the Schedule of Title Exceptions.

4.2.3 Location of Personalty. The Personalty will be located in the State of Nevada, and other than temporary (not to exceed three (3) months) uses outside that state in the ordinary course of Borrower's business, will not be removed from that state without the prior written consent of Lender.

ARTICLE 5 CONSTRUCTION AND MAINTENANCE OF MORTGAGED PROPERTY

5.1 Construction Loan Mortgage. This Instrument constitutes a "construction mortgage" as that term is defined in NRS 104.9334(8), as amended or recodified from time to time. The proceeds of the Loan secured by this Instrument are to be used by Borrower for the purpose of acquiring title to the Real Property and/or funding the construction, renovation, and remodeling of certain Improvements on the Real Property and are to be disbursed in accordance with the provisions of the Loan Agreement.

5.2 Construction. To protect the security of this Instrument, Borrower shall commence promptly and pursue with reasonable diligence to completion, the construction of the Improvements on the Real Property, all in accordance with the provisions of the Loan Agreement.

5.3 Maintenance. Borrower shall do each of the following: (a) maintain the Mortgaged Property at all times in good condition and repair; (b) not commit any waste of the Mortgaged Property, or remove, damage, demolish, or structurally alter any of the Improvements; (c) complete promptly and in good and workmanlike manner any Improvement; (d) except to the extent that insurance proceeds are applied by Lender to the satisfaction of the Indebtedness in accordance with the Loan Agreement, restore promptly and in good and workmanlike manner any of the Improvements or any portion thereof, which may for any reason be damaged or destroyed; (e) comply at all times with all laws, ordinances, regulations, covenants, and restrictions in any manner affecting the Mortgaged Property; (f) not commit or permit any act upon the Mortgaged Property in violation of law; and (g) do all acts which by reason of the character or use of the Mortgaged Property may be reasonably necessary to maintain and care for the same, the specific enumeration herein not excluding the general.

ARTICLE 6 INDEMNIFICATION AND OFF-SET

6.1 Indemnification. Borrower hereby indemnifies and holds Lender harmless in accordance with the following:

6.1.1 General Indemnification. Borrower shall indemnify and hold Lender harmless from any and all losses, damages, claims, causes of action, suits, debts, obligations, expenses (including reasonable attorneys' fees) or liabilities which arise from or are related to, the Note, the Loan Agreement, this Instrument, any other Loan Documents evidencing or securing the Note, the Mortgaged Property, or the construction, use or occupation of the Mortgaged Property, or any part thereof, or the Land, except to the extent arising from Lender's gross negligence or willful misconduct. If Lender commences an action against Borrower to declare or enforce any of the terms, covenants or conditions of this Instrument or because of the breach by Borrower of any of the terms, covenants, or conditions, or for the recovery of any sum secured hereby, Borrower shall pay to Lender reasonable attorneys' fees and costs actually incurred by Lender. The right to such attorneys' fees and costs shall be deemed to have accrued on the commencement of such action, and shall be enforceable whether or not such action is prosecuted to judgment. If Borrower breaches any term, covenant or condition of this Instrument, Lender may employ an attorney or attorneys to protect Lender's rights hereunder and in the event of such employment following any breach of Borrower, Borrower shall pay Lender reasonable attorneys' fees and costs actually incurred by Lender, whether or not action is actually commenced against Borrower by reason of such material breach.

6.1.2 Mechanics Liens. If Lender or the Land is held liable or could be held liable for, or is subject to any losses, damages, costs, charges or expenses, directly or indirectly on account of any claims for work, labor, or material furnished in connection with or arising from the construction of any building, fixture or improvements, then Borrower shall indemnify, defend and hold Lender harmless from all liability or expense arising therefrom including reasonable attorneys' fees and costs.

6.2 Off-Set. All sums payable by Borrower under the Note and this Instrument shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction. The obligations and liabilities of Borrower hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein) by reason of: (a) any damage to or destruction of, or any condemnation or similar taking of the Mortgaged Property or any part thereof; (b) any destruction or prevention of or interference with any use of the Mortgaged Property or any part thereof; (c) any title defect or encumbrance or any eviction from the Mortgaged Property or any part thereof by title paramount or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lender, or any action taken with respect to this Instrument by any trustee or receiver of Lender, or by any court, in any such proceeding; (e) any claim which Borrower has or might have against Lender; (f) the occurrence of an Event of Default or any default or failure on the part of Lender to perform or comply with any of the terms, covenants or conditions of this Instrument or of any

other agreement with Borrower; or (g) any other occurrence whatsoever, whether similar or dissimilar to the foregoing.

ARTICLE 7 TAXES AND IMPOSITIONS

7.1 Payment of Taxes and Impositions. Borrower shall pay, prior to delinquency, all real property taxes and assessments, general and special, and all other taxes, assessments and other governmental, municipal, or other charges or impositions of any kind or nature whatsoever (including without limitation, charges and assessments on water or water stocks used on or with the Mortgaged Property and levies or charges resulting from covenants, conditions and restrictions affecting the Mortgaged Property) which are assessed or imposed upon the Mortgaged Property, or become due and payable, and which create, may create, or appear to create, a lien upon the Mortgaged Property or any portion of the Mortgaged Property, or upon any equipment or other facility used in the construction, operation or maintenance of the Mortgaged Property (all of which taxes, assessments and other governmental charges of like nature are referred to as the "Impositions"); provided, however, that if, by law, any such Imposition is payable, or may at the election of the taxpayer be paid in installments, Borrower may pay the same together with any accrued interest on the unpaid balance of such Imposition in installments as the same become due and before any fine, penalty, interest or cost may be added thereto for the nonpayment of any such installment and interest.

7.2 Evidence of Payment. Borrower shall furnish Lender, within thirty (30) days after the date upon which such Imposition is due and payable by Borrower, official receipts of the appropriate taxing authority, or other proof satisfactory to Lender, evidencing the payment thereof.

7.3 Right to Contest. Borrower shall have the right before any delinquency occurs to contest or object to the amount or validity of any Imposition by appropriate legal proceedings, but such contest shall not be deemed or construed in any way as relieving, modifying or extending Borrower's covenant to pay any such Imposition at the time and in the manner provided in Section 7.1 of this Instrument unless Borrower has given prior written notice to Lender of Borrower's intent to so contest or object to an Imposition, and unless, at Lender's option, (a) Borrower shall demonstrate to Lender's satisfaction that the legal proceedings shall conclusively operate to prevent the sale of the Mortgaged Property, or any part thereof, to satisfy such Imposition prior to final determination of such proceedings; or (b) Borrower shall furnish a good and sufficient undertaking and sureties as may be required or permitted by law to accomplish a stay of such proceedings.

ARTICLE 8 ADDITIONAL COVENANTS

8.1 Payment of Utilities. Borrower shall pay, when due, all utility charges incurred by Borrower for the benefit of the Mortgaged Property or which may become a charge or lien against the Mortgaged Property for gas, electricity, water or sewer services furnished to the Mortgaged Property and all assessments or charges of a similar nature, whether public or private,

affecting the Mortgaged Property or any portion thereof, whether or not such assessments or charges are liens thereon.

8.2 Defense of Title. Borrower has and shall preserve good and marketable fee title to the Mortgaged Property free of all liens, claims, charges, security interests, encumbrances, easements or restrictions other than the matters identified in the Schedule of Title Exceptions. Except as provided otherwise in Section 7.3 of this Instrument and with the exception of the matters identified in the Schedule of Title Exceptions, Borrower shall promptly discharge and remove any lien or security interest which has, or may have, priority over or equality with the lien and security interest created by this Instrument. Borrower shall furnish to Lender written notice of any litigation, default, lien, security interest or notice of default affecting the Mortgaged Property or title thereto, within ten (10) Business Days of initial receipt of notice of such lien, security interest, litigation or default. Borrower shall appear in and defend any action or proceeding purporting to affect the security hereof, the Mortgaged Property, or the rights or powers of Lender or Trustee. Should Lender elect to appear in or defend any such action or proceeding, Borrower shall pay all costs and expenses, including costs of evidence of title and reasonable attorneys' fees and costs actually incurred by Lender or Trustee. Borrower shall, at its cost, do, execute, acknowledge, and deliver all further deeds, conveyances, instruments, assignments, notices of assignments, security agreements, financing statements, transfers, acts and assurances as Lender shall from time to time require, for the better perfecting, continuing, assuring, granting, conveying, assigning, transferring, and confirming unto Trustee and Lender the Mortgaged Property, and all rights hereby granted, conveyed or assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to grant, convey or assign to Trustee or Lender, or for carrying out the intention or facilitating the performance of the terms of the Note or the other Loan Documents.

8.3 Performance in Borrower's Stead. Should Borrower fail to make any payment or to do any act as provided in this Instrument after expiration of applicable notice and cure periods, then Lender or Trustee, but without any obligation to do so, and without notice to or demand upon Borrower and without releasing Borrower from any obligation hereof, may: (a) make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof (Lender or Trustee being authorized to enter upon the Mortgaged Property for such purposes); (b) commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Lender or Trustee; or (c) pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be superior to the lien of this Instrument; and in exercising any such powers, incur any liability, or expend such reasonable amounts as Lender may deem necessary therefor, including costs of evidence of title, employment of attorneys, and payment of reasonable attorneys' fees and costs. All such amounts expended by either or both Trustee or Lender shall, at the election of Lender, be added to the principal indebtedness secured by this Instrument and shall accrue interest in accordance with the terms of the Note. Borrower hereby waives and releases all claims or causes of action which may hereafter arise in favor of Borrower against Lender by reason of any action taken by Lender pursuant to any power or authority granted in this Section 8.3, except those

claims or causes of action resulting from or arising out of Lender's gross negligence or willful misconduct.

8.4 Repayment of Advances. Borrower shall immediately repay to Lender sums, with interest thereon as provided in the Note, which at any time may be paid or advanced by Lender for the payment of insurance premiums, Impositions, title searches, title reports or abstracts, and any other advances made by Lender which are reasonably necessary or desirable to maintain this Instrument as a prior, valid, and subsisting lien upon the Mortgaged Property, to preserve and protect Lender's interest in this Instrument or to preserve, repair, or maintain the Mortgaged Property. All such advances shall be wholly optional on the part of Lender, and Borrower's obligation to repay the same, with interest, to Lender shall be secured by the lien of this Instrument.

8.5 No Removal of Fixtures. Borrower shall not, during the existence of this Instrument and without the written consent of Lender, remove from the Mortgaged Property any fixture, structure, or other improvement at any time affixed or constructively affixed to the Mortgaged Property or any portion thereof, or any Personalty, except in the ordinary course of Borrower's business.

8.6 Further Assurance. Borrower authorizes Lender to file or record, as appropriate, such further instruments, including without limitation Uniform Commercial Code Financing Statements and Continuation Statements, and do such further acts as may be necessary or as may be reasonably required by Lender to carry out more effectively the purposes of this Instrument and to subject to the lien, security interest and mortgage created or intended to be created hereby any property, rights, or interests covered or intended to be covered by this Instrument. Borrower authorizes (to the extent such authorization is valid under applicable law) Lender to file such Uniform Commercial Code Financing Statements and Continuation Statements as Lender may deem necessary in order to perfect, or continue the perfection of, the security interests created by this Instrument. Borrower agrees not to change Borrower's name, location or state of organization from that set forth in Section 4.1.6 of this Instrument without thirty (30) days prior written notice to Lender.

8.7 No Further Encumbrances. As an express condition of Lender making the Loan, except for the 538 Loan, HOME Loan, and Oak Leaf Loan, Borrower shall not further encumber, pledge, mortgage, hypothecate, place any lien, charge or claim upon, or otherwise give as security the Mortgaged Property or any interest therein nor cause or allow by operation of law the encumbrance of the Mortgaged Property or any interest therein without the written consent of Lender even though such encumbrance may be junior to the encumbrance created by this Instrument. Encumbrance of the Mortgaged Property contrary to the provisions of this Section 8.7 without the express written consent of Lender, which encumbrance continues for a period of thirty (30) days following Borrower's receipt of written notice thereof, shall constitute an Event of Default and at Lender's option, Lender may declare the entire balance of principal and interest immediately due and payable, whether the same be created by Borrower or an unaffiliated third

party asserting a judgment lien, mechanic's or materialmen's lien or any other type of encumbrance or title defect other than the matters identified on the Schedule of Title Exceptions.

8.8 Due On Sale. Other than (a) a transfer of Personalty in the ordinary course of Borrower's business; or (b) the grant of any leasehold interest of three (3) years or less not containing an option to purchase, Borrower shall not sell, convey or otherwise transfer the Mortgaged Property or any part thereof or interest therein, without the prior written consent of Lender; provided, however, that leases of dwelling units made in the ordinary course of business shall be permitted and shall not require prior written consent of Lender. If the Mortgaged Property, or any part thereof, or any interest therein, is sold, conveyed or otherwise transferred without the prior written consent of Lender, or if Borrower be divested of title to the Mortgaged Property, or any part thereof or interest therein, in any manner, whether voluntarily or involuntarily, then the full Indebtedness, at the option of Lender and without demand or notice, shall immediately become due and payable. Except as provided in Section 7.3 of the Loan Agreement, it is expressly acknowledged and agreed that any direct or indirect transfer of any member interest of Borrower, shall constitute a transfer of the entire Mortgaged Property within the meaning of this Section 8.8.

8.9 Evidence of Title. Borrower shall deliver to, pay for and maintain with Lender until the indebtedness secured hereby is paid in full, such evidence of title as Lender may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements or endorsements thereto.

8.11 Compliance With Laws. Borrower shall comply with all laws, ordinances, regulations, easement agreements, covenants, conditions, and restrictions (including laws relating to hazardous wastes and/or protection of the environment, or species of plants or animals protected by federal, state, local or other law) affecting the Mortgaged Property. Borrower shall not cause, permit nor suffer any violation of any of the foregoing and shall pay all response costs, fees, or charges of any kind in connection therewith and defend, indemnify, and hold harmless Lender with respect thereto.

8.12 Financial Statements. Borrower shall keep adequate books and records of account of the Mortgaged Property and its own financial affairs sufficient to permit the preparation of financial statements therefrom in accordance with generally accepted accounting principles. Lender shall have the right to examine, copy and audit Borrower's records and books of account at all reasonable times. Borrower shall furnish to Lender copies of its financial statements and other financial information satisfactory to Lender at the time and in the manner provided in the Loan Agreement.

8.13 Inspections. Lender, and its agents, representatives and employees, are authorized, but not obligated, to enter at any reasonable time upon the Mortgaged Property for the purpose of inspecting the same, and for the purpose of performing any of the acts it or Borrower is authorized to perform under the terms of this Instrument or any other Loan Document.

8.14 No Merger. If the Mortgaged Property is under any lease or any portion thereof which constitutes a part of the Mortgaged Property shall at any time become vested in one owner, this Instrument and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger and, in such event, Lender shall continue to have and enjoy all of the rights and privileges of Lender as to the separate estates. In addition, upon the foreclosure of the lien created by this Instrument on the Mortgaged Property pursuant to the provisions of this Instrument, any leases or subleases then existing and created by Borrower shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless Lender or any purchaser at any such foreclosure sale shall so elect. No act by or on behalf of Lender or any such purchaser shall constitute a termination of any lease or sublease unless Lender or such purchaser shall give written notice thereof to such tenant or subtenant.

ARTICLE 9 CONDEMNATION AWARDS

If the Mortgaged Property or any portion thereof should be taken or damaged by reason of any public improvement or condemnation proceeding, Lender shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at Lender's option to commence, appear in, and prosecute in Lender's own name any action or proceeding, and to make any compromise or settlement, in connection with such taking. Borrower shall promptly give notice to Lender of any condemnation proceeding or any taking for public improvement. All such compensation, awards, damages, causes of action, proceeds, or other payments are hereby assigned to Lender, which may, after deducting therefrom all reasonable actual out-of-pocket costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, incurred by Lender in connection with such compensation, awards, damages, rights of action, proceeds, or other payments, release any and all moneys so received by Lender or apply the same, or any portion thereof, on any portion of the Indebtedness (whether or not then due) secured by this Instrument. Any surplus remaining after payment and satisfaction of the Indebtedness shall be paid to Borrower. Condemnation proceeds may be used for the restoration of the Mortgaged Property only if restoration of the Mortgaged Property is economically practicable (as determined by Lender) and there are sufficient condemnation proceeds and funds from Borrower (as determined by Lender) to restore the Mortgaged Property to a condition acceptable to Lender. Otherwise, Lender shall have no obligation to apply proceeds of condemnation to restore or repair damage to the Mortgaged Property regardless of whether such taking has a significant adverse impact on the operation of the remaining portion of the Mortgaged Property. Provided, notwithstanding the foregoing, Lender shall permit such proceeds to be used for repair or restoration of the Mortgaged Property if the conditions set forth in Section 6.13.6 of the Loan Agreement are satisfied. Borrower shall execute and deliver to Lender such further assignments of such compensation, awards, damages, causes of action, proceeds, or other payments as Lender may from time to time reasonably require.

ARTICLE 10 ASSIGNMENT OF LEASES, RENTS AND INCOME

10.1 Assignment of Leases and Rents. Borrower hereby absolutely assigns to Lender all right, title and interest of Borrower in and to all leases now existing or hereafter entered into by Borrower and demising the whole or any part of the Mortgaged Property, and does hereby further assign any and all rents and subrents, any and all other amounts received for the use of all or any portion of the Mortgaged Property, and any and all apartment rental agreements, unit rental agreements and room rental agreements and arrangements now owned or hereafter acquired, and all proceeds from such rents, apartment rents, unit rents and/or room rents, covering the Mortgaged Property or any portion thereof, now or hereafter existing or entered into, together with issues, royalties, income, profits and security deposits of and from the Mortgaged Property. Until the occurrence of an Event of Default which has not heretofore been cured, Borrower may, under a temporary revocable license granted hereby, collect and use all such rents, subrents, apartment rents, unit rents, issues, royalties, income, and profits which become payable prior to default. Upon the occurrence of an Event of Default which has not heretofore been cured, Borrower's license to collect and use any of such proceeds shall immediately cease without further action by or on behalf of any party, and Lender shall have the right, with or without taking possession of the Mortgaged Property, and either in person, by agent, or through a court-appointed receiver (Borrower hereby consents to the appointment of Lender or Lender's designee as such receiver), to sue for or otherwise collect all such rents, subrents, apartment rents, unit rents, issues, royalties, income, and profits, including those past due and unpaid. Any sums so collected, after the deduction of all costs and expenses of operation and collection (regardless of the particular nature thereof and whether incurred with or without suit or before or after judgment), including reasonable attorneys' fees, shall be applied toward the payment of the Indebtedness. Such right of collection and use of such proceeds by Lender shall obtain both before and after the exercise of the power of sale provisions of this Instrument, the foreclosure of this Instrument and throughout any period of redemption. The rights granted under this Section 10.1 shall in no way be dependent upon and shall apply without regard to whether all or a portion of the Mortgaged Property is in danger of being lost, removed, or materially injured, or whether the Mortgaged Property or any other security is adequate to discharge the obligations secured by this Instrument. Lender's failure or discontinuance at any time to collect any of such proceeds shall not in any manner affect the right, power, and authority of Lender thereafter to collect the same. Neither any provision contained herein, nor Lender's exercise of Lender's right to collect such proceeds, shall be, or be construed to be, an affirmation by Lender of any tenancy, lease, sublease, option, or other interest in the Mortgaged Property, or an assumption of liability under, or a subordination of the lien or charge of this Instrument to, any tenancy, lease, sublease, option, or other interest in the Mortgaged Property. All tenants, lessees, sublessees and other persons which have any obligation to make any payment to Borrower in connection with the Mortgaged Property or any portion thereof (individually and collectively, "Lessee") are hereby authorized and directed to pay the rents, subrents, apartment rents, unit rents, issues, royalties, income, and profits payable by them with respect to the Mortgaged Property, or any part thereof, directly to Lender on the demand of Lender. Lender's receipt of such rents, subrents, apartment rents, unit rents, room rents, issues, royalties, income,

and profits shall be a good and sufficient discharge of the obligation of Lessee, or other person concerned to make the payment connected with the amount so received by Lender.

10.2 Lender as Creditor of Lessee. Lender, and not Borrower, shall be the creditor of each Lessee in respect of assignments for the benefit of creditors and bankruptcy, reorganization, insolvency, dissolution, or receivership proceedings affecting such Lessee. Lender, however, shall not be the party obligated to make timely filings of claims in such proceedings or to otherwise pursue creditor's rights therein. Lender shall have the option to apply any monies received by Lender as such creditor towards the reduction of the principal or interest under the Indebtedness as Lender may elect.

10.3 Application of Payments. If at any time during the term of this Instrument Lender receives or obtains a payment, installment, or sum which is less than the entire amount then due under the Note secured by this Instrument and under all other instruments further evidencing or securing the Indebtedness, then Lender shall, except as provided otherwise in the Note and notwithstanding any instructions which may be given by Borrower, have the right to apply such payment, installment, or sum, or any part thereof, to such of the items or obligations then due from Borrower or to Lender as Lender may in Lender's sole discretion determine.

10.4 No Waiver of Rights by Collection of Proceeds. The entering upon and taking possession of the Mortgaged Property or any portion of the Mortgaged Property or the collection of rents, subrents, issues, royalties, income, profits, proceeds of fire and other insurance policies, or compensation or awards for any taking or damaging of the Mortgaged Property, or the application or release thereof as aforesaid, shall not cure or waive any Event of Default or notice of default hereunder, shall not invalidate any act done pursuant to such notice of default, and shall not operate to postpone or suspend the obligation to make, or have the effect of altering the size of, any scheduled installments provided for in the Indebtedness secured by this Instrument.

ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

11.1 Events of Default. The occurrence of any one or more of the following shall constitute an Event of Default under this Instrument.

11.1.1 Default in Payment. Any failure by Borrower to pay or deposit when due any amount required by this Instrument, the Note, the Loan Agreement, or any other Loan Document, and such default continues for a period of ten (10) Business Days after written notice from Lender is received by Borrower.

11.1.2 Representations and Warranties. Any representation or warranty made by Borrower in this Instrument or in any other Loan Document proves to be materially false or misleading in any material respect.

11.1.3 Fraud. Any fraud or material misrepresentation or material omission by Borrower, any of its officers, directors, trustees, general partners, managing members, or

either Guarantor in connection with (i) the application for or creation of the Indebtedness, (ii) any financial statement, rent schedule, or other report or information provided to Lender during the term of the Indebtedness, or (iii) any request for Lender's consent to any proposed action, including a request for disbursement of funds under any Loan Document.

11.1.4 Forfeiture. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Instrument or Lender's interest in the Mortgaged Property and such action or proceeding is not dismissed within sixty (60) days following its commencement.

11.1.5 Dissolution. Borrower becomes dissolved or terminated.

11.1.6 Receiver. A receiver, trustee, or custodian is appointed for any part of Borrower's property, or any part of Borrower's property is assigned for the benefit of creditors.

11.1.7 Impairment to First Lien. At any time the first priority security interest granted to Lender by the Pledge and Security Agreement or the Assignment of Developer Rights is impaired by any lien, encumbrance or other defect, or at any time the Loan Agreement or any other applicable Loan Document creating a lien on any of the Collateral is impaired by any lien, encumbrance or other defect other than the matters identified in the Schedule of Title Exceptions and such condition continues for a period of thirty (30) days following Borrower's receipt of written notice from Lender of such condition.

11.1.8 Cessation of Construction. There is any cessation of construction of the Improvements for any period after the date construction shall commence in excess of thirty (30) consecutive days, unless (a) the cessation of construction has been caused by conditions beyond the control of Borrower, including without limitation, acts of God or the elements, fire, flood, strikes, labor disputes, delays in delivery of material and disruption of shipping; (b) Borrower has made adequate provision acceptable to Lender for the protection of materials stored on-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (c) Borrower has delivered to Lender satisfactory evidence that such cessation of construction will not adversely affect or interfere with the rights of Borrower under material contracts or subcontracts relating to the construction or operation of the Improvements; and (d) Borrower has delivered to Lender satisfactory evidence that the completion of the Improvements will be accomplished within the time permitted by Section 7.1 of the Loan Agreement.

11.1.9 Judgment or Attachment. A judgment is entered against Borrower or any attachment be made for an amount in excess of \$50,000.00 and such judgment or attachment is not paid or otherwise fully satisfied within thirty (30) days of the date it is entered; provided, however, such event shall not constitute an Event of Default so long as the judgment or attachment is bonded and appealed in good faith, and the judgment creditor's right to enforce its judgment or attachment is stayed.

11.1.10 Default under Leases. Any default occurs by Borrower under a Lease and the default extends beyond the applicable notice and cure period under the Lease and the default has a material adverse effect on the Mortgaged Property or the financial condition of Borrower.

11.1.11 Default under 538 Loan. Any default occurs by Borrower under the 538 Loan that continues beyond the applicable notice and cure period.

11.1.12 Default under HOME Loan. Any material default occurs by Borrower under the HOME Loan that continues beyond the applicable notice and cure period.

11.1.13 Default under Oak Leaf Loan. Any material default occurs by Borrower under the Oak Leaf Loan that continues beyond the applicable notice and cure period.

11.1.14 Default under Operating Agreement. Any breach of or default under the Operating Agreement which extends beyond any applicable notice and cure period and materially and adversely affects Lender.

11.1.15 Default under Allocation Agreements. Any material default occurs and is continuing under the Carryover Allocation Agreement that is not cured within any applicable cure period or otherwise permitted by the Agency.

11.1.16 Default under HAP Contract. Any material default occurs and is continuing under the HAP Contract and not cured within any applicable cure period or otherwise permitted by Contract Administrator.

11.1.17 Status of Guarantor. During the term of the Guaranty, Individual Guarantor dies or becomes incapacitated, or American Covenant is dissolved, and is not replaced by a replacement Guarantor acceptable to Lender within ninety (90) days of such death, incapacitation, or dissolution; or if either Guarantor is an officer, manager, partner or member of Borrower, and such Guarantor resigns, withdraws or is terminated or otherwise discharged by Borrower as an officer, manager, partner, or member of Borrower and is not replaced by a replacement Guarantor acceptable to Lender within ninety (90) days of such event.

11.1.18 Disbursements. Investor Member, for any reason, fails to make a disbursement of any Installment Funds, including the Stabilization Installment, proceeds in accordance with the Operating Agreement.

11.1.19 Insufficient Loan Proceeds. At any time an Application for Disbursement is delivered to Lender and there are insufficient collected, unencumbered Loan proceeds then remaining in the Loan Proceeds Account, together with 538 Loan proceeds, HOME Loan proceeds, Oak Leaf Loan proceeds, and Installment Funds required to be used to finance the construction of the Improvements as set forth in the Operating Agreement to pay the requested disbursement and Borrower has failed to perform Borrower's obligation under Section 8.8.2 of the Loan Agreement.

11.1.20 Bankruptcy. A petition in bankruptcy is filed against Borrower, and such petition is not dismissed within ninety (90) days of filing, a petition in bankruptcy is filed by Borrower or either Guarantor or a receiver or trustee of the property of Borrower is appointed; or Borrower files a petition for reorganization under any of the provisions of the United States Code, Title 11 (as the same may be amended or recodified from time to time), or any law, State or Federal, or makes an assignment for the benefit of creditors or is adjudged insolvent by any State or Federal Court of competent jurisdiction.

11.1.21 Covenants. Any failure by Borrower to perform any of its obligations under this Instrument, as and when required, which continues for a period of thirty (30) days after notice of such failure by Lender to Borrower. However, if Borrower's failure to perform its obligations as described in this Section 11.1.21 is of the nature that it cannot be cured within the thirty (30) day grace period but reasonably could be cured within an additional thirty (30) days, then Borrower shall have additional time as determined by Lender in its discretion, not to exceed that additional thirty (30) days, in which to cure such default, provided that Borrower has diligently commenced to cure such default during the initial 30-day grace period and diligently pursues the cure of such default. However, no such notice or grace periods shall apply in the case of any such failure which could, in Lender's reasonable judgment, absent immediate exercise by Lender of a right or remedy under this Instrument, result in material and immediate harm to Lender, impairment of the Note or this Instrument or any other security given under any other Loan Document.

11.1.22 Default under Other Loan Documents. Any failure by Borrower to perform any of its obligations as and when required under any Loan Document other than this Instrument which failure remains uncured beyond any applicable notice and cure period, if any, specified in that Loan Document. If no cure period is specified, Borrower shall have ten (10) Business Days to cure a monetary default and thirty (30) days to cure a non-monetary default.

11.1.23 Guarantor. Any of the foregoing events occur concerning either Guarantor during the term of the Guaranty and such Guarantor is not replaced by a replacement Guarantor acceptable to Lender within sixty (60) days of the occurrence of such event.

11.1.24 Letter of Credit. Borrower fails to maintain the Letter of Credit and any extensions thereof in good order from the issue date shown on the Letter of Credit to and including the thirtieth (30th) day following the Maturity Date.

11.1.25 Construction. Construction of the Improvements is not commenced or completed as set forth in Section 7.1 of the Loan Agreement.

11.2 Cure by Investor Member. Notwithstanding anything to the contrary contained herein, Lender hereby agrees that any cure of any default made or tendered by Investor Member shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower hereunder shall also be sent to the Investor Member.

11.3 Acceleration; Notice. Time is of the essence hereof. Upon the occurrence of any Event of Default under this Instrument which has not heretofore been cured, at Lender's option and in addition to any other remedy Lender may have under the Note, Lender may declare all sums secured hereby immediately due and payable and elect to have the Mortgaged Property sold in the manner provided herein. In the event Lender elects to sell the Mortgaged Property, Lender may execute or cause Trustee to execute a written notice of default and of election to cause the Mortgaged Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in the office of the County Recorder of the County wherein the Mortgaged Property is located. Lender shall also deposit with Trustee the Note and all documents evidencing expenditures secured by this Instrument.

11.4 Exercise of Power of Sale. Upon receipt of such notice from Lender, Trustee shall cause to be recorded, published and delivered to Borrower and Guarantor such Notice of Default and Election to Sell as then required by Chapter 107 of the Nevada Revised Statutes. Trustee shall, without demand on Borrower, after lapse of such time as may be required by law and after recordation of such Notice of Default and Election to Sell first give notice of the time and place of such sale, in the manner provided by the laws of the State of Nevada for the sale of real property under execution, and may from time to time postpone such sale by such advertisement as it may deem reasonable, or without further advertisement, by proclamation made to the persons assembled at the time and place previously appointed and advertised for such sale, and on the day of sale so advertised, or to which such sale may have been postponed, Trustee may sell the Property so advertised, at public auction, at the time and place specified in the notice, either in the county in which the Property, or any part thereof, to be sold, is situated, or at the principal office of Trustee located in Lincoln County, State of Nevada, in its discretion, to the highest cash bidder. Trustee shall execute and deliver to the purchaser a Trustee's Deed conveying the Property so sold, but without any covenant of warranty, express or implied. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Lender, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the payment of Trustee's and attorneys' fees and costs; (b) cost of any evidence of title procured in connection with such sale; (c) all sums expended under the terms hereof in conjunction with any default provision hereunder, not then repaid, with accrued interest at the rate then provided for in the Note; (d) all sums then secured by this Instrument, including interest and principal on the Note; and (e) the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the County Clerk of the County wherein the Mortgaged Property is located.

11.5 Surrender of Possession. Borrower shall surrender possession of the Mortgaged Property to the purchaser immediately after the sale of the Mortgaged Property as provided in Section 11.4 of this Instrument, in the event such possession has not previously been surrendered by Borrower.

11.6 UCC Remedies. Notwithstanding anything to the contrary in Section 11.4 and Section 11.5 of this Instrument, Lender, with regard to all Personalty, including fixtures, chattels,

equipment, inventory, and personal property, in which a security interest is granted to Lender under Section 2.2 of this Instrument, shall have the right to exercise, from time to time, any and all rights and remedies available to Lender, as a secured party under the Nevada Uniform Commercial Code, and any and all rights and remedies available to Lender under any other applicable law. With respect to any notices required or permitted under the Uniform Commercial Code, Borrower agrees that ten (10) days' prior written notice shall be deemed commercially reasonable. Upon written demand from Lender, Borrower shall, at Borrower's expense, assemble such fixtures, chattels, equipment, inventory, and personal property and make them available to Lender at a reasonably convenient place designated by Lender and Lender's expense in retaking, holding, preparing for sale, selling or the like shall be borne by Borrower, such expenses to include Lender's and Trustee's attorneys' fees incurred in connection therewith. Lender shall have the right to enter upon any premises where the Personalty or records pertaining to the Personalty may be and take possession of the Personalty and records relating to the Personalty. Lender may sell, lease or otherwise dispose of any or all of the Personalty and, after deducting the reasonable costs and out-of-pocket expenses incurred by Lender, including, without limitation, (a) reasonable attorneys' fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Personalty, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Personalty, and (g) costs for preservation and protection of the Personalty, apply the remainder to pay, or to hold as a reserve against, the obligations.

The rights and remedies of Lender upon the occurrence of one or more Events of Default (whether such rights and remedies are conferred by statute, by rule of law, by this Instrument, the Loan Agreement or otherwise) may be exercised by Lender, either alternatively, concurrently, or consecutively in any order. The exercise by Lender or Trustee at the express direction of Lender of any one or more of such rights and remedies shall not be construed to be an election of remedies nor waiver of any other rights and remedies Lender might have unless, and limited to the extent that, Lender shall elect or so waive by an instrument in writing delivered to Trustee. Without limiting the generality of the foregoing, to the extent that this Instrument covers both the Real Property and the Personalty, Lender may, in the sole discretion of Lender, either alternatively, concurrently or consecutively in any order:

11.6.1 Proceed as to the Real Property and the Personalty in accordance with Lender's rights and remedies in respect to real property.

11.6.2 Proceed as to the Real Property in accordance with Lender's rights and remedies in respect to real property and proceed as to the Personalty in accordance with Lender's rights and remedies in respect to the personal property.

Lender may, in the sole discretion of Lender, appoint Trustee as the agent of Lender for the purpose of disposition of the Personalty in accordance with the Nevada Uniform Commercial Code - Secured Transactions.

If Lender should elect to proceed as to the Real Property, Improvements and the Personalty in accordance with Lender's rights and remedies in respect to real property:

(a) All the Personalty may be sold, in the manner and at the time and place provided in this Instrument, in one lot, or in separate lots consisting of any combination or combinations of the Real Property, Improvements and Personalty, as the Lender may elect, in the sole discretion of Lender.

(b) Borrower acknowledges and agrees that a disposition of the Personalty in accordance with Lender's rights and remedies in respect to real property, as hereinabove provided, is a commercially reasonable disposition of the Personalty.

If Lender should elect to proceed as to the Personalty in accordance with Lender's rights and remedies in respect to personal property, Lender shall have all the rights and remedies conferred on a secured party by NRS 104.9601 to NRS 104.9717, both inclusive.

11.7 Foreclosure as a Mortgage. If an Event of Default occurs hereunder, Lender shall have the option to foreclose this Instrument in the manner provided by law for the foreclosure of mortgages on real property and Lender shall be entitled to recover in such proceedings all costs and expenses incident thereto, including reasonable attorneys' fees and costs in such amounts as shall be fixed by the court.

11.8 Receiver. If an Event of Default occurs, Lender, as a matter of right and without regard to the interest of Borrower therein, shall have the right upon notice to Borrower to apply to any court having jurisdiction to appoint a receiver or receivers of the Mortgaged Property, and Borrower hereby irrevocably consents to such appointment. Any such receiver or receivers shall have all the usual powers and duties of a receiver and shall continue as such and exercise all such powers until completion of the sale of the Mortgaged Property or the foreclosure proceeding, unless the receivership is sooner terminated.

11.9 No Remedy Exclusive. No remedy conferred upon or reserved to Lender under this Instrument shall be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Instrument or any other Loan Document, or now or hereafter existing at law or in equity or by statute. No delay or failure to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

11.10 Rights upon Default. In making the Loan, Lender has relied upon the rights available to Lender under this Instrument upon the occurrence of an Event of Default, including, but not limited to, the rights to accelerate the payment of any and all amounts secured by this Instrument, to sell the Mortgaged Property encumbered by this Instrument pursuant to the power of sale granted hereunder, the right to foreclose this Instrument as a mortgage, and the right to have a receiver appointed. In addition to any other damages that might be recoverable by Lender

under the terms of this Instrument, Borrower shall be liable for any damages incurred by Lender because Lender is, for any reason, denied the opportunity to exercise Lender's rights upon the occurrence of an Event of Default, including, but not limited to, such damages as are occasioned by depreciation of the Mortgaged Property, loss of use of the Mortgaged Property by Lender, and all opportunity costs incurred through the loss of use of any funds as would have been received by Lender through exercise of the power of sale or foreclosure, or the appointment of a receiver.

11.11 Incorporation of Certain Nevada Covenants. The following Covenants, Nos. 1, 3, 4 (at the Default Rate described in the Loan Agreement and/or Note), 6, 7 (reasonable), 8 and 9 of NRS 107.030, where not in conflict with the provisions of the Loan Documents, are hereby adopted and made a part of this Instrument. Upon any Event of Default by Borrower hereunder, Lender may (a) declare all sums secured immediately due and payable without demand or notice or (b) have a receiver appointed as a matter of right without regard to the sufficiency of said property or any other security or guaranty and without any showing as required by NRS 107.100. All remedies provided in this Instrument are distinct and cumulative to any other right or remedy under this Instrument or afforded by law or equity and may be exercised concurrently, independently or successively. The sale of said property conducted pursuant to Covenants Nos. 6, 7 and 8 of NRS 107.030 may be conducted either as to the whole of said property or in separate parcels and in such order as Trustee may determine.

ARTICLE 12 GENERAL PROVISIONS

12.1 Notices. All notices, demands and other communications under or concerning this Instrument or the other Loan Documents shall be in writing. Each notice shall be addressed to the intended recipient at its address set forth below in this Section 12.1, and shall be deemed given on the earliest to occur of (i) the date when the notice is received by the addressee; (ii) the first Business Day after the notice is delivered to a recognized overnight courier service, with arrangements made for payment of charges for next Business Day delivery; or (iii) the third Business Day after the notice is deposited in the United States mail with postage prepaid, certified mail, return receipt requested.

Any person entitled to receive notice under this 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 12.1. Each party agrees that it will not refuse or reject delivery of any notice given in accordance with this Section 12.1, that it will acknowledge, in writing, the receipt of any notice upon request by the other party and that any notice rejected or refused by it shall be deemed for purposes of this Section 12.1 to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service.

Lender: Bonneville Mortgage Company
111 Main, Suite 1600
Salt Lake City, Utah 84111
Attn: Brent H. Peterson

With copies to: Kirton McConkie
50 East South Temple, Suite 400
Salt Lake City, Utah 84111
Attn: John B. Lindsay

Borrower: minnie st. 2020 LLC
3773 Howard Hughes Parkway, Suite 500S
Las Vegas, Nevada 89169

and

minnie st. 2020 LLC
234 Shelter Valley Drive
Kalispell, Montana 59901
Attn: Gerald M. Fritts

With copies to: Coats Rose, P.C.
365 Canal Street, Suite 800
New Orleans, Louisiana 70130
Attn: A. Kelton Longwell

Managing Member: Minnie St. 2020 Managing Member, LLC
234 Shelter Valley Drive
Kalispell, Montana 59901
Attn: Gerald M. Fritts

Guarantor: American Covenant Senior
Housing Foundation, Inc.
234 Shelter Valley Drive
Kalispell, Montana 59901
Attn: Gerald M. Fritts

and

Timothy R. Birk
3390 Highway 2 East, #2
Kalispell, Montana 59901

Investor Member: USA Institutional Minnie Apartments LLC
c/o TRGHT, Inc.
777 West Putnam Avenue
Greenwich, Connecticut 06830
Attn: Joanne D. Flanagan, Esq.

With copies to: Kraus Lam LLC
230 West Monroe Street, Suite 2528
Chicago, Illinois 60606
Attn: Daniel L. Kraus, Esq.

12.2 Severability. If any provision of this Instrument shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not affect any other provision or provisions contained in this Instrument or render the same invalid, inoperative, or unenforceable to any extent whatever.

12.3 Amendments, Changes, and Modifications. This Instrument may not be amended, changed, modified, altered, or terminated without a written instrument signed by the party against whom enforcement of the modification, waiver, discharge or termination is asserted.

12.4 Governing Law. This Instrument shall be governed by and construed in accordance with the laws of the state in which the Mortgaged Property is located and the United States of America, as applicable.

12.5 Interpretation. Whenever the context permits or requires, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The section headings contained in this Instrument are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any provisions hereof.

12.6 Binding Effect. This Instrument shall be binding upon Borrower and Borrower's successors and assigns. This Instrument shall inure to the benefit of Lender, and Lender's successors and assigns.

12.7 Waivers. No delay or failure to exercise any right or power accruing upon any Event of Default, including Lender requiring strict performance by Borrower of any undertakings, agreements, or covenants contained in this Instrument, shall impair any such right or power or shall be construed to be a waiver thereof, including the right to demand strict compliance and performance, but any such right and power may be exercised from time to time and as often as may be deemed expedient. Any waiver by Lender of any Event of Default under this Instrument shall not waive or affect any other Event of Default hereunder, whether such Event of Default is prior or subsequent thereto and whether of the same or a different type. None of the undertakings, agreements, or covenants of Borrower under this Instrument, shall be deemed to have been waived by Lender, unless such waiver is evidenced by an instrument in writing signed by an officer of Lender and directed to Borrower specifying such waiver.

12.8 Successor Trustee. Lender may appoint a successor trustee at any time by filing for record in the office of the County Recorder of the county wherein the Mortgaged Property is located, a substitution of trustee. From the time the substitution is filed for record, the new Trustee shall succeed to all the powers, duties, authority and title of Trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made in the manner provided by law.

12.9 Acceptance of Trust. Trustee accepts this Trust when this Instrument, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of any pending sale under any other deed of trust or any action or proceeding in which Borrower, Lender, or Trustee shall be a party, unless brought by Trustee.

12.10 Attorneys' Fees and Expenses. Borrower agrees to reimburse Lender for any reasonable attorneys' fees and out-of-pocket costs actually incurred by Lender with respect to any bankruptcy or insolvency proceeding, or other action involving Borrower or any guarantor as a debtor. Borrower additionally agrees to pay all reasonable costs and out-of-pocket expenses, including, without limitation, (a) reasonable attorneys' fees and legal expenses, (b) transportation and storage costs, (c) advertising of sale of the Mortgaged Property, (d) sale commissions, (e) sales tax, (f) costs for improving or repairing the Mortgaged Property, and (g) costs for preservation and protection of the Mortgaged Property, incurred by Lender in obtaining possession of Mortgaged Property, storage and preparation for sale, sale or other disposition, and otherwise incurred in foreclosing upon the Mortgaged Property. Any and all such costs and out-of-pocket expenses shall be payable by Borrower upon demand, together with interest thereon from the date of the advance until repaid, both before and after judgment, at the rate provided in the Note.

Regardless of any breach or default, Borrower agrees to pay all expenses, including reasonable attorneys' fees and legal expenses, incurred by Lender in any bankruptcy proceedings of any type involving Borrower, the Mortgaged Property, or this Instrument, including, without limitation, expenses incurred in modifying or lifting the automatic stay, determining adequate protection, use of cash collateral, or relating to any plan of reorganization.

If either party to this Instrument brings suit against the other as a result of any alleged breach of this Instrument by the other or failure by the other to perform its obligations under this Instrument or under any other instrument delivered pursuant to this Instrument, or to seek declaratory relief as to the rights or obligations of either party to this Instrument, then the prevailing party in such action, in addition to any other relief which may be granted in such action, shall be entitled to judgment for reasonable attorneys' fees incurred by reason of such action and all costs of such action (including but not limited to reasonable fees of expert witnesses) and costs incurred in preparation of such action, at both trial and appellate levels.

12.11 Request for Notice. Borrower requests that a copy of any notice of default and of any notice of sale hereunder be mailed to Borrower at the address for Borrower specified in Section 12.1 of this Instrument.

12.12 Limitation on Damages. Lender and its officers, directors, employees, representatives, agents, and attorneys, shall not be liable to Borrower or any Guarantor for consequential, special, or other non-compensatory damages arising from or relating to any breach of contract, tort, or other wrong in connection with or relating to this Instrument or the Mortgaged Property regardless of whether Lender may have been advised of the possibility of such damages.

12.13 Preferential Transfers. If the incurring of any debt by Borrower or the payment of any money or transfer of property to Lender by or on behalf of Borrower or any Guarantor should for any reason subsequently be determined to be “voidable” or “avoidable” in whole or in part within the meaning of any state or federal law (collectively “voidable transfers”), including, without limitation, fraudulent conveyances or preferential transfers under the Bankruptcy Code or any other federal or state law, and Lender is required to repay or restore any voidable transfers or the amount or any portion thereof, or upon the advice of Lender’s counsel is advised to do so, then, as to any such amount or property repaid or restored, including all reasonable costs, expenses, and attorneys’ fees of Lender related thereto, the liability of Borrower and Guarantor, and each of them, and this Instrument, shall automatically be revived, reinstated and restored and shall exist as though the voidable transfers had never been made.

12.14 Survival. All agreements, representations, warranties and covenants made by Borrower shall survive the execution and delivery of this Instrument, the filing and consummation of any bankruptcy proceedings, and shall continue in effect so long as any obligation to Lender contemplated by this Instrument is outstanding and unpaid, notwithstanding any termination of this Instrument. All agreements, representations, warranties and covenants in this Instrument shall run with the land, shall bind the party making the same and its heirs and successors, and shall be to the benefit of and be enforceable by each party for whom made and their respective heirs, successors and assigns.

12.15 Usury. All agreements between the parties to this Instrument and the holder of the Note are hereby expressly limited so that in no contingency or event whatsoever, whether by reason of deferment or advancement of the proceeds of the Loan evidenced by the Note, acceleration of maturity of the Loan, or otherwise shall the amount paid or agreed to be paid to holder for the use, forbearance or detention of the money to be loaned under the Note exceed the maximum interest rate permissible under applicable law. If, from any circumstance whatsoever, fulfillment of any provision of the Note or of any other agreement between the parties to the Note and the holder, at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. In the event that any payment is received by the holder of the Note which would otherwise be deemed to be a payment of interest in excess of the maximum allowed by law, such payment shall be deemed to have been paid on account of

principal at the time of receipt. This provision shall never be superseded or waived and shall control every other provision of the Note and all agreements between the parties and the holder of the Note.

12.16 Changes in Writing. This Instrument and any of its terms may only be changed, waived, discharged or terminated by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement subsequently made by Borrower shall be superior to the rights of the holder of any intervening lien or encumbrance.

12.17 Notice of Bankruptcy. Borrower shall promptly notify Lender orally of any filing by or against Borrower of a petition under the Bankruptcy Code. Borrower shall promptly thereafter give written notice of such filing to Lender, setting forth any information available to Borrower including the date of such filing, the court in which such petition was filed, and the relief sought therein. Borrower shall promptly deliver to Lender, any and all notices, summonses, pleadings, applications and other documents received by Borrower in connection with any such petition and any proceedings relating thereto.

12.18 Defined Terms. Unless otherwise defined in this Instrument, capitalized terms used herein have the meanings given them in the Loan Agreement.

12.19 Counterparts. This Instrument may be signed in any number of counterparts, each of which shall be an original for all purposes, but all of which taken together shall constitute only one agreement. The production of any executed counterpart of this Instrument shall be sufficient for all purposes without producing or accounting for any other counterpart.

12.20 Integrated Agreement and Subsequent Amendment. This Instrument and any other agreements, documents, obligations, and transactions contemplated by this Instrument, constitute the entire agreement between Lender and Borrower with respect to the subject matter of these agreements, and may not be altered or amended except by written agreement signed by Lender and Borrower. **BORROWER IS NOTIFIED THAT THESE AGREEMENTS ARE A FINAL EXPRESSION OF THE AGREEMENT BETWEEN LENDER AND BORROWER AND THESE AGREEMENTS MAY NOT BE CONTRADICTED BY EVIDENCE OF ANY ALLEGED ORAL AGREEMENT.**

All prior and contemporaneous agreements, arrangements and understandings between the parties to this Instrument as to the subject matter of this Instrument, are, except as otherwise expressly provided in this Instrument, rescinded.

*[SIGNATURE PAGE(S) AND EXHIBIT(S),
IF ANY, FOLLOW THIS PAGE]*

EXHIBIT A

REAL PROPERTY DESCRIPTION

The real property referred to herein below is situated in the City of Caliente, County of Lincoln, State of Nevada, and is described as follows:

LOTS TWO (2) AND THREE (3) IN BLOCK FORTY-SIX (46) OF THE NORTH SIDE ADDITION TOWN OF CALIENTE AS SHOWN BY MAP THEREOF RECORDED OCTOBER 08, 1940, AS FILE NO. 15661 IN THE OFFICE OF THE COUNTY RECORDER OF LINCOLN COUNTY, NEVADA.