



MISC 2014086132



NOV 03 2014 16:20 P 17

Fee amount: 106.00  
 FB: 0C-30728  
 COMP: DW

Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 11/03/2014 16:20:12:00



2014086132

After recording, return to:

H. Daniel Smith  
 Smith, Gardner, Slusky, Lazer,  
 Pohren & Rogers, LLP  
 8712 West Dodge Road  
 Suite 400  
 Omaha, NE 68114  
 (402) 392-0101  
 (402) 392-1011  
 dsmith@lawsgs.com

(Space Above For Recorder's Use Only)

#### LOAN AGREEMENT, NOTE AND MORTGAGE ASSUMPTION AGREEMENT

**THIS LOAN AGREEMENT, NOTE AND MORTGAGE ASSUMPTION AGREEMENT** (this "**Agreement**") is made and executed on October 31, 2014, is entered into among **GREAT WESTERN BANK**, a South Dakota corporation, its successors and/or assigns, whose mailing address is 14545 W. Center Road, Omaha, NE 68144 ("**Lender**"), **RM10 HOLDINGS, LLC**, a Nebraska limited liability company, whose address is 3949 Forest Parkway, Suite 100, Wheatfield, NE 14120 ("**Original Borrower**"), and **RM10A HOLDINGS, LLC**, a Delaware limited liability company ("**New Borrower**" or "**RM10A**"), having an address at c/o Mount Kellett Capital Management, 623 Fifth Avenue, 18th Floor, New York, NY 10022. Original Borrower and New Borrower are hereafter sometimes collectively referred to as "**Borrower Parties**".

#### PRELIMINARY STATEMENT

A. Original Borrower is the current owner of fee title to that certain real property ("**Land**") and the buildings and improvements thereon ("**Improvements**"), commonly known as "200th and West Maple Road in Elkhorn, Nebraska." located in the City of Elkhorn, County of Douglas, State of Nebraska, more particularly described in **Exhibit A** attached hereto and made a part hereof (the Land and the Improvements are hereafter sometimes collectively referred to as the "**Project**").

B. On the 28th day of December, 2012, the Original Borrower and Lender made and entered into certain Loan Documents as defined in the Construction Loan Agreement ("**Loan Agreement**"), including but not limited to the Loan Agreement, Promissory Note, and a Deed of Trust, Construction Security Agreement, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the "**Mortgage**") recorded January 3, 2013, at Record 2013000634 in the office of the Register of Douglas County, Nebraska together with certain other agreements under which Lender was granted a first lien security interest in and to the Mortgaged Property as described in the Mortgage and as also described on the attached and incorporated Exhibit A hereto, the purpose of which was to secure the indebtedness of the Promissory Note in the face

113 103 0

amount of Eleven Million Three Hundred Eighty-Three Thousand Five Hundred Sixty-One and No/100ths Dollars (\$11,383,561.00); and

C. Any and all agreements, documents, instruments evidencing, securing or in any manner relating to the Loan (as defined in the Loan Agreement), as all of the same may be amended, restated, supplemented or otherwise modified from time to time, shall hereinafter be collectively referred to as the "**Loan Documents**"). All defined terms shall have the meaning as set out in the Loan Agreement unless otherwise defined herein.

D. New Borrower desires to acquire the Project from Original Borrower and to assume Original Borrower's obligations under the Loan Documents as provided herein.

E. A transfer of the Project to, and the assumption of the Loan by, a third party without the consent of the holder of the Mortgage is prohibited by the terms thereof.

F. The Lender has agreed to consent to the following requested actions (collectively the "**Requested Actions**"): (i) Original Borrower conveying the Project to New Borrower, (ii) New Borrower assuming all of Original Borrower's obligations under the Loan Documents, all on the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of Ten and No/100 Dollars (\$10.00) paid by each of the parties to the other, the mutual covenants set forth below, and other good and valuable consideration, receipt and sufficiency of which are acknowledged, the parties agree as follows:

## ARTICLE 1

### ACKNOWLEDGMENTS, WARRANTIES AND REPRESENTATIONS

1.1 **Original Borrower Representations.** As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, Original Borrower acknowledges, warrants, represents and agrees acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) **Incorporation of Recitals.** All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

(b) **Authority of Original Borrower.** Original Borrower is a Nebraska limited liability company duly organized and validly existing under the laws of the State of Nebraska, and has all power, authority, permits, consents, authorizations and licenses necessary to carry on its business, to construct, equip, own and operate the Project and to execute, deliver and perform this Agreement; all resolutions of the members and/or managers of the Original Borrower necessary to authorize the execution, delivery and performance of this Agreement which have been or are to be executed by and on behalf of Original Borrower have been duly obtained and are in full force and effect; this Agreement has been duly authorized, executed and delivered by and on behalf of Original Borrower so as to constitute the valid and binding obligations of Original Borrower, enforceable in accordance with their terms; and Original Borrower has complied with all applicable assumed and/or fictitious name requirements in Nebraska, and is

qualified to do business as a limited liability company in Nebraska; and the execution of this Agreement by Original Borrower will not (x) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Original Borrower or the certificate of limited partnership or limited partnership agreement or any other organizational document of Original Borrower or (y) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which Original Borrower is a party or by which the Project may be bound or affected.

(c) Compliance with Laws. To Original Borrower's knowledge, all permits, licenses, franchises or other evidences of authority to use and operate the Project as it is presently being operated and as contemplated by the Loan Documents are current, valid and in full force and effect. Original Borrower has not received any written notice from any governmental entity claiming that Original Borrower or the Project are not presently in compliance with any laws, ordinances, rules and regulations bearing upon the use and operation of the Project, including, without limitation, any notice relating to any violations of zoning, building, environmental, fire, health, or other laws, ordinances, rules, codes or regulations.

(d) Title to Project and Legal Proceedings. Original Borrower is the current owner of fee title in the Project. There are no pending or threatened suits, judgments, arbitration proceedings, administrative claims, executions or other legal or equitable actions or proceedings against Original Borrower or the Project, or any pending or threatened condemnation proceedings or annexation proceedings affecting the Project, or any agreements to convey any portion of the Project, or any rights thereto to any person, entity, or government body or agency not disclosed in this Agreement.

(e) Loan Documents. The Loan Documents constitute valid and legally binding obligations of Original Borrower enforceable against Original Borrower, as limited herein, and the Project in accordance with their terms. Original Borrower acknowledges and agrees that nothing contained in this Agreement, nor the Requested Actions, shall release or relieve Original Borrower from its obligations, agreements, duties, liabilities, covenants and undertakings under the Loan Documents arising prior to the date hereof. Original Borrower has no defenses, setoffs, claims, counterclaims or causes of action of any kind or nature whatsoever against Lender or any of Lender's predecessors in interest, and any subsidiary or affiliate of Lender and all of the past, present and future officers, directors, contractors, employees, agents, attorneys, representatives, participants, successors and assigns of Lender and Lender's predecessors in interest (collectively, "**Lender Parties**") or with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Project. To the extent Original Borrower would be deemed to have any such defenses, setoffs, claims, counterclaims or causes of action as of the date hereof, Original Borrower waives and relinquishes them.

(f) Bankruptcy. Original Borrower has no intent to (i) file any voluntary petition under any Chapter of the Bankruptcy Code, Title 11, U.S.C.A. ("**Bankruptcy Code**"), or in any manner to seek any proceeding for relief, protection, reorganization, liquidation, dissolution or similar relief for debtors ("**Debtor Proceeding**") under any local, state, federal or other insolvency law or laws providing relief for debtors, (ii) directly or indirectly to cause any involuntary petition under any Chapter of the Bankruptcy Code to be filed against Original Borrower or any partners thereof or (iii) directly or indirectly to cause the Project or any portion

or any interest of Original Borrower in the Project to become the property of any bankrupt estate or the subject of any Debtor Proceeding.

(g) No Default. To Original Borrower's knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

(h) Reaffirmation. Original Borrower reaffirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

1.2 **Acknowledgments, Warranties and Representations of New Borrower.** As a material inducement to Lender to enter into this Agreement and to consent to the Requested Actions, New Borrower acknowledges, warrants, represents and agrees to and with Lender as follows:

(a) Incorporation of Recitals. All of the facts set forth in the Preliminary Statement of this Agreement are true and correct and incorporated into this Agreement by reference.

(b) Authority of New Borrower. RM10A is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware and is qualified to transact business in the State of Nebraska. Andrew Axelrod Jonathan Fiorello and Kenneth M. Franasiaak (each, a "**RM10A Authorized Signatory**") are each an Authorized Signatory of RM10A with respect to the transactions contemplated hereby. Andrew Axelrod, Jonathan Fiorello and Kenneth M. Franasiaak, each acting alone without the joinder of any other member or manager of RM10A or any other party, has the power and authority to execute this Agreement on behalf of and to duly bind RM10A under this Agreement and the Loan Documents. The execution and delivery of, and performance under, this Agreement and the Loan Documents by RM10A has been duly and properly authorized pursuant to all requisite company action and will not (i) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to RM10A or the partnership agreement or any other organizational document of RM10A or (ii) result in a breach of or constitute or cause a default under any indenture, agreement, lease or instrument to which RM10A is a party or by which the Project may be bound or affected.

(c) Defaults on Other Indebtedness. Neither New Borrower nor SHH<sub>2</sub> or any of its subsidiaries has materially defaulted under its or their obligations with respect to any other indebtedness.

(d) Prohibited Person. New Borrower warrants and represents, after review of the website identified below, that neither New Borrower nor any Guarantor nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the holders of indirect equity interests in New Borrower) is an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of, Executive Order 13224, issued on September 24, 2001 ("**EO13224**"), (ii) whose name appears on the United States Treasury Department's Office

of Foreign Assets Control ("OFAC") most current list of "**Specifically Designated National and Blocked Persons**" (which list may be published from time to time in various media including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>, (iii) who commits, threatens to commit or supports "**terrorism**", as that term is defined in EO13224, or (iv) who, to the knowledge of New Borrower, is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses [i] – [iv] above are herein referred to as a "**Prohibited Person**"). New Borrower covenants and agrees that neither New Borrower nor any Guarantor nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the holders of indirect equity interests in New Borrower) will (a) knowingly conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (b) knowingly engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. New Borrower further covenants and agrees to deliver (from time to time) to Lender any such certification as may be requested by Lender in its reasonable discretion, confirming that, based on reasonable inquiry (x) neither New Borrower nor any Guarantor nor any of their respective officers, directors, shareholders, partners, members or affiliates (including the holders of indirect equity interests in New Borrower) is a Prohibited Person and (y) neither New Borrower, any Guarantor or their respective officers, directors, shareholders, partners, members or affiliates (including the holders of indirect equity interests in New Borrower) has (a) knowingly conducted any business, nor engaged in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person or (b) knowingly engaged in or conspired to engage in any transaction that evaded or avoided, or had the purpose of evading or avoiding, or attempted to violate, any of the prohibitions set forth in EO13224.

(e) Loan Documents. The Loan Documents, from and after the date hereof, are valid and legally binding obligations of New Borrower, enforceable against New Borrower and the Project in accordance with their terms. This Agreement and the execution of other documents contemplated hereby do not constitute the creation of a new debt or the extinguishment of the debt evidenced by the Loan Documents, nor will they in any way affect or impair the liens and security interests created by the Loan Documents, which New Borrower acknowledges to be valid and existing liens and security interests in the Project. New Borrower agrees that the lien and security interests created by the Loan Documents continue to be in full force and effect, unaffected and unimpaired by this Agreement or by the transfer of the Project or any collateral described in financing statements filed in connection with the Loan Documents and that said liens and security interests shall so continue in their perfection and priority until the debt secured by the Loan Documents is fully discharged. New Borrower has no defenses, affirmative defenses, setoffs, claims, counterclaims, cross-claims or causes of action of any kind or nature whatsoever against the Lender Parties with respect to (i) the Loan, (ii) the Loan Documents, or (iii) the Project. To the extent New Borrower would be deemed to have any such defenses, affirmative defenses, setoffs, claims, counterclaims, cross-claims or causes of action as of the date hereof, New Borrower knowingly waives and relinquishes them. New Borrower acknowledges that it has received copies of all of the Loan Documents.



(f) No Default. To New Borrower's actual knowledge, no event, fact or circumstance has occurred or failed to occur which constitutes, or with the lapse or passage of time, giving of notice or both, could constitute a default or Event of Default under the Loan Documents.

(g) Reaffirmation. To New Borrower's actual knowledge, New Borrower affirms and confirms the truth and accuracy of all representations and warranties set forth in the Loan Documents, in all material respects, as if made on the date hereof.

## ARTICLE 2

### ACKNOWLEDGEMENTS AND COVENANTS OF BORROWER PARTIES

As a material inducement to Lender to enter into this Agreement and to consent to Requested Actions each of Borrower Parties, as to itself only, acknowledges, warrants, represents, covenants and agrees to and with Lender as follows:

2.1 Assumption of Loan. New Borrower hereby assumes the indebtedness due under the Note, the Loan and all of Original Borrower's other obligations, as grantor, mortgagor, borrower, assignor, trustor, indemnitor, guarantor, or maker, as the case may be, under the Loan Documents to the same extent as if New Borrower had signed such instruments. New Borrower agrees to comply with and be bound by all the terms, covenants and agreements, conditions and provisions set forth in the Loan Documents.

2.2 Indebtedness. As of February 14, 2014 the outstanding principal balance of the Loan was \$ \_\_\_\_\_. In the event of any error in, or omission from, the foregoing, Lender shall not be prejudiced, limited, or estopped, in any way in its right to charge, collect and receive any and all monies lawfully due Lender under the Loan Documents. By its execution hereof, Lender represents and warrants to New Borrower that to Lender's actual knowledge (i) the amount set forth above is correct, (ii) Lender has not issued any written notices of default to Original Borrower which have not been cured, and (iii) there are no existing material defaults under the Loan Documents.

2.3 Payment of Transaction Costs and Expenses. Any or both of Borrower Parties shall pay at the time of execution of this Agreement by Lender: (a) the legal fees and disbursements of Lender's counsel, in connection with the preparation of this Agreement and the transactions contemplated in this Agreement; (b) all recording costs and documentary stamps, or other taxes if any, due upon the recording of this Agreement; and (c) the costs of updating Lender's policy of title insurance insuring the Mortgage to a current date and endorsing such policy to include this Agreement in the description of the Mortgage with no additional exceptions, or, at Lender's option, the cost of obtaining a new Lender's policy of title acceptable to Lender insuring the Loan Documents as affected by this Agreement.

2.4 Release and Covenant Not To Sue. Each of Borrower Parties, as to itself and all of its heirs, successors and assigns only, remises, releases, acquits, satisfies and forever discharges Lender Parties from any and all manner of debts, accountings, bonds, warranties, representations, covenants, promises, contracts, controversies, agreements, liabilities,

obligations, expenses, damages, judgments, executions, actions, inactions, claims, demands and causes of action of any nature whatsoever, at law or in equity, known or unknown, either now accrued or subsequently maturing, which any of Borrower Parties now has or hereafter can, shall or may have by reason of any matter, cause or thing, from the beginning of the world to and including the Acquisition Date, including, without limitation, matters arising out of or relating to (a) the Loan (b) the Loan Documents, and (c) the Project. Each of Borrower Parties, as to itself and all of its respective heirs, successors and assigns only, covenants and agrees never to institute or cause to be instituted or continue prosecution of any suit or other form of action or proceeding of any kind or nature whatsoever against any of Lender Parties by reason of or in connection with any of the foregoing matters, claims or causes of action.

2.5 **Further Assurances.** Borrower Parties shall execute and deliver to Lender such agreements, instruments, documents, financing statements and other writings as may be requested from time to time by Lender to perfect and to maintain the perfection of Lender's security interest in and to the Project, and to consummate the transactions contemplated by or in the Loan Documents and this Agreement.

### ARTICLE 3

#### ADDITIONAL PROVISIONS

3.1 **Provisions Relating to Control of the Borrower.** For the purpose of this Section, capitalized terms not defined in the Loan Agreement or in this Agreement shall have the meaning given to them in that certain Senior Housing Holdings, LLC ("SHH") Limited Liability Company Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2014 (the "SHH LLC Agreement"). The following (each a "Control Default"), in addition to any other defaults or Events of Default under the Loan Documents, shall each constitute an Event of Default under the Loan Agreement: (i) Calamar Capital Services, LLC is removed as Administrative Manager or Accounting Manager for New Borrower under the SHH LLC Agreement without Lender's prior written consent; (ii) Calamar Asset Manager is removed as asset manager under that certain Asset Management Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 2014 or any successor thereto, without Lender's prior written consent; (iii) at any time during the life of the Loan the Property Manager is an entity other than a Franasiaik Controlled entity; (iv) the Asset Management Agreement or any property management agreement affecting the Project is entered into, terminated, altered or amended without Lender's prior written consent; (v) a deadlock occurs between Calamar and MK with respect to any Unanimous Action or any Construction Unanimous Action that has any material impact or effect on New Borrower, the Loan, or the Project in Lender's sole judgment; (vi) a Calamar Event of Default occurs or is claimed to have occurred by MK and MK exercises its remedies under the SHH LLC Agreement in connection therewith; (vii) MK or Calamar files a lawsuit or initiates an arbitration, or either asserts any claim, demand or cause of action against the other party arising under or connected with the SHH LLC Agreement, the Borrower or the Project; (viii) a Calamar Change of Control occurs; (ix) a Bankruptcy Event occurs with respect to SHH; (x) Calamar's Percentage Interest in SHH becomes lower than 5.00%; (xi) the Project, in the reasonable judgment of the Lender, is no longer being operated and managed by Franasiaik or a Franasiaik Controlled entity; (xii) the SHH LLC Agreement is terminated, modified or amended without Lender's prior written consent; (xiii) SHH acts or fails to act in a manner or with an effect that has or could have, in Lender's

sole judgment, a material adverse impact on the construction, Completion, management or operation of the Project, or the repayment of the Loan. If a Control Default shall occur, Borrower shall give Lender written notice not later than ten (10) days after the date of the occurrence of such Control Default. If such notice is given in a timely manner, Borrower shall have 30 days from the date of such notice to present to Lender any proposed cure for such default. Lender may accept or reject such proposed cure in its sole, but reasonable discretion within such 30 day period. A failure to accept the proposed cure within the 30 day period shall be deemed to be a rejection of such cure.

1.1 **Transfers.** Notwithstanding anything to the contrary herein or in any of the Loan Documents, transfers of direct or indirect equity interests in the SHH shall be permitted without notice to or consent of Lender, provided that at all times (a) no such transfer shall result in any person or entity owning, directly or indirectly, more than 20% of the equity interests in New Borrower, other than persons who own more than 20% of the equity interests in New Borrower as of the date hereof (and/or affiliates of such owning persons). Lender hereby agrees that such a transfer shall not constitute a default under the Loan Documents.

3.2 **Consent of Lender.** Subject to the terms of this Agreement, Lender hereby consents to the Requested Actions. Borrower Parties agree that this Agreement shall not be deemed an agreement by Lender to consent to any other transfer or conveyance of the Project or assumption of the Loan, or a consent to any secondary financing or secondary encumbrance on the Project or New Borrower or any interests in New Borrower.

3.3 **UCC Filings.** New Borrower hereby grants and confirms unto Lender a first lien priority interest in all of New Borrower's personal property and all of the fixtures located at the Project to the maximum extent permitted by the Uniform Commercial Code ("UCC"). Borrower Parties hereby consents to the filing of any financing statements or UCC forms required to be filed in the applicable states or any other applicable filing office, including, but not necessarily limited to, the state of organization of New Borrower and in the Records (collectively "**Filings**") in order to perfect or continue the perfection of said interest and, notwithstanding anything contained in any of the Loan Documents to the contrary, in accordance with the UCC, as amended subsequent to the making of the Loan, said Filings may be made by Lender without the consent or signature of either of the Borrower Parties.

3.4 **References to Loan Documents.** All references to the term Loan Documents in the Mortgage and the other Loan Documents shall hereinafter be modified to include this Agreement and all documents executed and/or required in connection with the Requested Actions.

## ARTICLE 4

### MISCELLANEOUS PROVISIONS

4.1 **No Limitation of Remedies.** No right, power or remedy conferred upon or reserved to or by Lender in this Agreement is intended to be exclusive of any other right, power or remedy conferred upon or reserved to or by Lender under this Agreement, the Loan Documents or at law, but each and every remedy shall be cumulative and concurrent, and shall



be in addition to each and every other right, power and remedy given under this Agreement, the Loan Documents or now or subsequently existing at law.

4.2 **No Waivers.** Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement shall constitute a waiver of any rights or remedies of Lender under the Loan Documents or at law. No delay or failure on the part of any party hereto in the exercise of any right or remedy under this Agreement shall operate as a waiver, and no single or partial exercise of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy. No action or forbearance by any party hereto contrary to the provisions of this Agreement shall be construed to constitute a waiver of any of the express provisions. Any party hereto may in writing expressly waive any of such party's rights under this Agreement without invalidating this Agreement.

4.3 **Successors or Assigns.** Whenever any party is named or referred to in this Agreement, the heirs, executors, legal representatives, successors, successors-in-title and assigns of such party shall be included. All covenants and agreements in this Agreement shall bind and inure to the benefit of the heirs, executors, legal representatives, successors, successors-in-title and assigns of the parties, whether so expressed or not.

4.4 **Construction of Agreement.** Each party hereto acknowledges that it has participated in the negotiation of this Agreement and no provision shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured, dictated or drafted such provision. Borrower Parties at all times have had access to an attorney in the negotiation of the terms of and in the preparation and execution of this Agreement and have had the opportunity to review and analyze this Agreement for a sufficient period of time prior to execution and delivery. No representations or warranties have been made by or on behalf of Lender, or relied upon by Borrower Parties, pertaining to the subject matter of this Agreement, other than those set forth in this Agreement. All prior statements, representations and warranties, if any, are totally superseded and merged into this Agreement, which represent the final and sole agreement of the parties with respect to the subject matters. All of the terms of this Agreement were negotiated at arm's length, and this Agreement was prepared and executed without fraud, duress, undue influence or coercion of any kind exerted by any of the parties upon the others. The execution and delivery of this Agreement is the free and voluntary act of Borrower Parties.

4.5 **Invalid Provision to Affect No Others.** If, from any circumstances whatsoever, fulfillment of any provision of this Agreement or any related transaction at the time performance of such provision shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity. If any clause or provision operates or would prospectively operate to invalidate this Agreement, in whole or in part, then such clause or provision only shall be deemed deleted, as though not contained herein, and the remainder of this Agreement shall remain operative and in full force and effect.

4.6 **Notices.** Except as otherwise specifically provided to the contrary, any and all notices, elections, approvals, consents, demands, requests and responses ("**Notices**") permitted or

required to be given under this Agreement and the Loan Documents shall not be effective unless in writing, signed by or on behalf of the party giving the same, and sent by certified or registered mail, postage prepaid, return receipt requested, or by hand delivery or overnight courier service (such as Federal Express), to the party to be notified at the address of such party set forth below or at such other address within the continental United States as such other party may designate by notice specifically designated as a notice of change of address and given in accordance with this Section. Any Notices shall be effective upon the earlier of their receipt or three days after mailing in the manner indicated in this Section. Receipt of Notices shall occur upon actual delivery but if attempted delivery is refused or rejected, the date of refusal or rejection shall be deemed the date of receipt. Any Notice, if given to Lender, must be addressed as follows, subject to change as provided above:

If to New Borrower:	RM10A Holdings, LLC c/o Mount Kellett Capital Management 623 Fifth Avenue 18th Floor New York, NY 10022
with copy to:	Cleary Gottlieb Steen & Hamilton LLP One Liberty Plaza New York, New York 10006 Attn: Donald A. Stern
If to Borrower:	RM10 Holdings, LLC 3949 Forest Parkway Suite 100 Wheatfield, NE 14120 Attn: Kenneth M. Franasiak
with copy to:	CALAMAR 3949 Forest Parkway, Ste 100 Wheatfield, NY 14120 Attn: Norman Bennett
If to Lender:	Great Western Bank 14545 W. Center Road Omaha, NE 68144 Attn: Michael T. Phelps
with copy to:	Smith, Gardner, Slusky, Lazer, Pohren & Rogers, LLP 8712 West Dodge Road Suite 400 Omaha, NE 68114 Attn: H. Daniel Smith

New Borrower hereby irrevocably designates and appoints Kenneth M. Franasiak (“**Notice Designee**”) at the address above as the designated representative of New Borrower for the purpose of receiving all Notices from Lender in connection with this Agreement and the Loan

Documents; provided, however, Lender may also in its sole discretion provide notice to the Co-Owners, but Lender's failure to provide such notice to all entities shall not, in any instance, be deemed a failure of Lender to provide notice hereunder so long as any such notice is provided to the Notice Designee as provided above.

4.7 **Governing Law.** This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Nebraska.

4.8 **Headings; Exhibits.** The headings of the articles, sections and subsections of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not be used to construe, limit or otherwise affect this Agreement.

4.9 **Modifications.** The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, signed by the Party against whom the enforcement of the change, modification, waiver, discharge or termination is asserted. Lender's consent to the Requested Actions shall not be deemed to constitute Lender's consent to any provisions of the organizational documents that would be in violation of the terms and conditions of any of the Loan Documents.

4.10 **Time of Essence; Consents.** Time is of the essence of this Agreement and the Loan Documents. Any provisions for consents or approvals in this Agreement shall mean that such consents or approvals shall not be effective unless in writing and executed by Lender.

4.11 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

4.12 **WAIVER OF TRIAL BY JURY.**

(a) **BORROWER PARTIES, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (i) SUBMIT TO PERSONAL JURISDICTION IN NEBRASKA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THE SECURITY INSTRUMENT, THIS AGREEMENT, OR ANY OTHER OF THE LOAN DOCUMENTS, (ii) AGREE THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION PRESIDING IN THE COUNTY IN WHICH THE PROJECT IS LOCATED, (iii) SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND (iv) AGREE THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF LENDER TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TO THE FULL EXTENT PERMITTED BY LAW, BORROWER PARTIES FURTHER CONSENT AND AGREE TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR**

**CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO THE BORROWER PARTIES AT THE ADDRESS FOR NOTICES DESCRIBED IN SECTION 5.6 HEREOF, AND CONSENT AND AGREE THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).**

**(b) BORROWER PARTIES, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO THE INDEBTEDNESS SECURED HEREBY OR ANY CONDUCT, ACT OR OMISSION OF LENDER OR BORROWER PARTIES, OR ANY OF THEIR DIRECTORS, OFFICERS, PARTNERS, MANAGERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH LENDER OR BORROWER PARTIES, IN EACH OF THE FOREGOING CASES, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.**

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

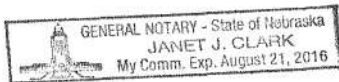
**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

LENDER:

GREAT WESTERN BANK, a South Dakota  
corporationBy Michael T. Phelps  
Michael T. Phelps, Vice PresidentSTATE OF NEBRASKA       )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 31 day of October, 2014, by Michael T. Phelps, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is the Vice President of Great Western Bank, a South Dakota corporation, for and on behalf of said Great Western Bank, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

Janet J. Clark  
Notary Public



Signature page to  
Loan Agreement, Note and Mortgage Assumption Agreement  
S - 1



## BORROWER:

RM10 HOLDINGS, LLC, a Nebraska limited liability company

By:



Kenneth M. Franasiak, Manager of RM10 Holdings, LLC

STATE OF NEW YORK )

ss.

COUNTY OF NIAGARA )

The foregoing instrument was acknowledged before me this 27 day of October, 2014, by Kenneth M. Franasiak, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is a Manager of RM10 Holdings, LLC, for and on behalf of said RM10 Holdings, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

  
 Notary Public

MICHELLE HAWKINS  
 Notary Public, State Of New York  
 Reg. 01HA6087820  
 Qualified in Erie County  
 My Commission Expires February 24, 2015

Signature page to  
 Loan Agreement, Note and Mortgage Assumption Agreement  
 S - 2

## NEW BORROWER:

RM10A HOLDINGS, LLC, a Delaware limited liability company

By: 

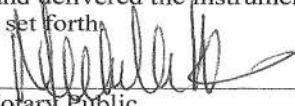
Kenneth M. Franasiak, Authorized Signatory

STATE OF NEW YORK )

COUNTY OF NIAGARA )

ss.

The foregoing instrument was acknowledged before me this 27 day of October, 2014, by Kenneth M. Franasiak, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the entity upon behalf of which he acted, executed the instrument. He is an Authorized Signatory of RM10A Holdings, LLC, for and on behalf of said RM10A Holdings, LLC, and he acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.


  
 Notary Public

MICHELLE HAWKINS  
 Notary Public, State Of New York  
 Reg. 01HA6067820  
 Qualified In Erie County  
 My Commission Expires February 24, 2015

Signature page to  
 Loan Agreement, Note and Mortgage Assumption Agreement  
 S - 3

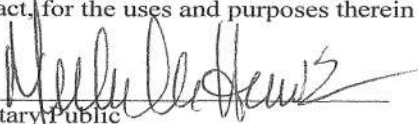
### CONSENT OF GUARANTOR

The undersigned Guarantor of the Loan described herein does hereby represent and warrant that all of the facts set forth in the Preliminary Statement of this Agreement are true and correct, requests of the Lender that it agree to the Requested Action, ratifies and confirms Guarantor's Guaranty, and further consents to the above and foregoing Agreement.

  
Kenneth M. Franasiak

STATE OF NEW YORK                    )  
  )       ss.  
COUNTY OF NIAGARA                )

21 The foregoing instrument was acknowledged before me, a Notary Public, this day of October, 2014, by Kenneth M. Franasiak, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same and acknowledged, signed and delivered the instrument as his free and voluntary act, for the uses and purposes therein set forth.

  
Notary Public

MICHELLE HAWKINS  
Notary Public, State Of New York  
Reg. 01RA6067820  
Qualified In Erie County  
My Commission Expires February 24, 2015

Signature page to  
Loan Agreement, Note and Mortgage Assumption Agreement  
S - 4

EXHIBIT A  
Mortgaged Property

Lot 10, in PINEY CREEK REPLAT, a Subdivision, as surveyed, platted and recorded, in  
Douglas County, Nebraska.

Exhibit page to  
Loan Agreement, Note and Mortgage Assumption Agreement

A - 1  
[NEWYORK 2869042\_+2]