

After recording
return to:

David K. Broadbent
Holland & Hart LLP
222 South Main, Suite 2200
Salt Lake City, Utah 84101

18688-13

Entry 2013004732
Book 1331 Page 800-830 \$187.00
14-MAY-13 03:57
RANDY SIMMONS
RECORDER, UINTAH COUNTY, UTAH
AFFILIATED FIRST TITLE
321 E STATE RD STE 200 AMERICAN FOR
Rec By: SYLENE ACCUTTOROOP , DEPUTY

Entry 2013004732
Book 1331 Page 800

**DEED OF TRUST,
ASSIGNMENT OF RENTS,
AND SECURITY AGREEMENT**

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

UTAH

THIS MULTIFAMILY DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT (“**Instrument**”) is made as of this 9th day of May, 2013, by **VERNAL HEIGHTS, LLC**, a Utah limited liability company, whose address is 8703 Sandy Parkway, Sandy, UT 84070, as grantor (“**Borrower**”), to Affiliated First Title Insurance Agency, as trustee (“**Trustee**”), for the benefit of **BANK OF MONTANA**, a Montana S Corporation, whose address is 125 Bank Street, Suite 100, Missoula, MT 59802, Attn: Steve Grover, Vice President, as beneficiary (“**Lender**”).

RECITAL

Borrower, in consideration of the Indebtedness and the trust created by this Instrument, irrevocably grants, assigns, conveys and warrants to Trustee, in trust, with power of sale, the Mortgaged Property, including the Land located in Uintah County, State of Utah and described in Exhibit A attached to this Instrument.

AGREEMENT

TO SECURE TO LENDER the repayment of the Indebtedness evidenced by Borrower’s Note payable to Lender dated as of the date of this Instrument, maturing on April 20, 2023 (“**Maturity Date**”), in the principal amount of \$10,300,000.00, and all renewals, extensions and modifications of the Indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Agreement or any other Loan Document.

Borrower represents and warrants that Borrower is lawfully seized of the Mortgaged Property and has the right, power and authority to grant, convey and assign the Mortgaged Property, and that the Mortgaged Property is unencumbered except as shown on the schedule of exceptions to coverage in the title policy issued to and accepted by Lender contemporaneously with the execution and recordation of this Instrument and insuring Lender’s interest in the Mortgaged Property (“**Schedule of Title Exceptions**”). Borrower covenants that Borrower will warrant and defend generally the title to the Mortgaged Property against all claims and demands, subject to any easements and restrictions listed in the Schedule of Title Exceptions.

Covenants. In consideration of the mutual promises set forth in this Instrument, Borrower and Lender covenant and agree as follows:

1. **Definitions.** The following terms, when used in this Instrument (including when used in the above recitals), will have the following meanings and any capitalized term not specifically defined in this Instrument will have the meaning ascribed to that term in the Loan Agreement:

“**Attorneys’ Fees and Costs**” means (a) fees and out-of-pocket costs of Lender’s attorneys, as applicable, including costs of Lender’s in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and

expenses; (b) costs and fees of expert witnesses, including appraisers; (c) investigatory fees; and (d) the costs for any opinion required by Lender pursuant to the terms of the Loan Documents.

“Borrower” means all Persons identified as “Borrower” in the first paragraph of this Instrument, together with their successors and assigns.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which Lender or the national banking associations are not open for business.

“Event of Default” means the occurrence of any event described in Section 17.

“Fixtures” means all property owned by Borrower which is attached to the Land or the Improvements so as to constitute a fixture under applicable law, including: machinery, equipment, engines, boilers, incinerators and installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air or light; antennas, cable, wiring and conduits used in connection with radio, television, security, fire prevention or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; and exercise equipment.

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

“Tax and Insurance Reserve Deposits” is defined in Section 9(e).

“Imposition” is defined in Section 9(e).

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

“Indebtedness” means the principal of, interest at the rate set forth in the Note on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 14 to protect the security of this Instrument.

“Land” means the land described in Exhibit A.

“Leases” means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property, and all modifications, extensions or renewals.

“Lender” means the entity identified as “Lender” in the first paragraph of this Instrument, or any subsequent holder of the Note.

“Lien” means any mortgage, deed of trust, deed to secure debt, security interest or other lien or encumbrance on the Mortgaged Property.

“Loan Agreement” means the Business Loan Agreement executed by Borrower in favor of Lender and dated as of the date of this Instrument, as such agreement may be amended from time to time.

“Loan Documents” means the Note, this Instrument, the Loan Agreement, all guaranties, all indemnity agreements, all collateral agreements, UCC filings, and any other documents now or in the future executed by Borrower, any guarantor or any other Person in connection with the loan evidenced by the Note, as such documents may be amended from time to time.

“Mortgaged Property” means all of Borrower’s present and future right, title and interest in and to all of the following:

- (a) The Land.
- (b) The Improvements.
- (c) The Fixtures.
- (d) The Personalty.
- (e) All current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights of way, strips and gores of land, streets, alleys, roads, sewer rights, waters, watercourses and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated.
- (f) All proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender’s requirement.
- (g) All awards, payments and other compensation made or to be made by any municipal, state or federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof.
- (h) All contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations.

- (i) All proceeds from the conversion, voluntary or involuntary, of any of the items described in subsections (a) through (h) inclusive into cash or liquidated claims, and the right to collect such proceeds.
- (j) All Rents and Leases.
- (k) All earnings, royalties, accounts receivable, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by this Instrument.
- (l) All Tax and Insurance Reserve Deposits.
- (m) All refunds or rebates of Impositions by Governmental Authority or insurance company (other than refunds applicable to periods before the real property tax year in which this Instrument is dated).
- (n) All tenant security deposits which have not been forfeited by any tenant under any Lease and any bond or other security in lieu of such deposits.
- (o) All names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.
- (p) All of Borrower's current present and future right, title and interest in and to all easements appurtenant to the Mortgaged Property, including, without limitation, all of Borrower's present and future right, title and interest in and to that certain Cross Access/Cross Parking Easement recorded as Entry No. 2011008302, in Book 1255, at Page 396, Uintah County, Utah, Records.

“Note” means the Note executed by Borrower in favor of Lender and dated as of the date of this Instrument, including all schedules, riders, allonges and addenda, as such Note may be amended, modified and/or restated from time to time.

“Notice” or **“Notices”** means all notices, demands and other communication required under the Loan Documents.

“Person” means any natural person, sole proprietorship, corporation, general partnership, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, joint venture, association, joint stock company, bank, trust, estate, unincorporated organization, any federal, state, county or municipal government (or any agency or political subdivision thereof), endowment fund or any other form of entity.

“Personalty” means all of the following:

- (a) Accounts (including deposit accounts) of Borrower related to the Mortgaged Property.
- (b) Equipment and inventory owned by Borrower, which are used now or in the future in connection with the ownership, management or operation of the Land or Improvements or are located on the Land or Improvements, including furniture, furnishings, machinery,

building materials, goods, supplies, tools, books, records (whether in written or electronic form) and computer equipment (hardware and software).

- (c) Other tangible personal property owned by Borrower which is used now or in the future in connection with the ownership, management or operation of the Land or Improvements or is located on the Land or in the Improvements, including ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposers, washers, dryers and other appliances (other than Fixtures).
- (d) Any operating agreements relating to the Land or the Improvements.
- (e) Any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements.
- (f) All other intangible property, general intangibles and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land and including subsidy or similar payments received from any sources, including a Governmental Authority.
- (g) Any rights of Borrower in or under letters of credit.

“Property Jurisdiction” means the State of Utah.

“Rents” means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants.

“Taxes” means all taxes, assessments, and other charges, if any, whether general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, will become a Lien on the Land or the Improvements.

“Transfer” means any of the following:

- (i) A sale, assignment, transfer or other disposition or divestment of any interest in Borrower or the Mortgaged Property (whether voluntary, involuntary or by operation of law).
- (ii) The granting, creating or attachment of a Lien, encumbrance or security interest (whether voluntary, involuntary or by operation of law).
- (iii) The issuance or other creation of an ownership interest in a legal entity, including a partnership interest, interest in a limited liability company or corporate stock.
- (iv) The withdrawal, retirement, removal or involuntary resignation of a partner in a partnership or a member or Manager in a limited liability company.
- (v) The merger, dissolution, liquidation, or consolidation of a legal entity or the reconstitution of one type of legal entity into another type of legal entity.

- (vi) A change of the Guarantor.

For purposes of defining the term "Transfer," the term "partnership" means a general partnership or a limited partnership, and the term "partner" means a general partner or a limited partner.

2. Uniform Commercial Code Security Agreement.

- (a) This Instrument is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subjected to a security interest under the Uniform Commercial Code, for the purpose of securing Borrower's obligations under this Instrument and to further secure Borrower's obligations under the Note, this Instrument and other Loan Documents, whether such Mortgaged Property is owned now or acquired in the future, and all products and cash and non-cash proceeds thereof (collectively, "**UCC Collateral**"), and by this Instrument, Borrower grants to Lender a security interest in the UCC Collateral. To the extent necessary under applicable law, Borrower hereby authorizes Lender to prepare and file financing statements, continuation statements and financing statement amendments in such form as Lender may require to perfect or continue the perfection of this security interest.
- (b) Unless Borrower gives Notice to Lender within 30 days after the occurrence of any of the following, and executes and delivers to Lender modifications or supplements of this Instrument (and any financing statement which may be filed in connection with this Instrument) as Lender may require, Borrower will not (i) change its name, identity, structure or jurisdiction of organization; (ii) change the location of its place of business (or chief executive office if more than one place of business); or (iii) add to or change any location at which any of the Mortgaged Property is stored, held or located.
- (c) If an Event of Default has occurred and is continuing, Lender will have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Instrument or existing under applicable law. In exercising any remedies, Lender may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of Lender's other remedies.
- (d) This Instrument also constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture.

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

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents.
 - (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower.
 - (ii) Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to

constitute an absolute present assignment and not an assignment for additional security only.

- (iii) For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents will not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the Property Jurisdiction, then the Rents will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on Rents in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b)
 - (i) Until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, including Tax and Insurance Reserve Deposits, and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums (to the extent not included in Tax and Insurance Reserve Deposits), tenant improvements and other capital expenditures.
 - (ii) So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument.
 - (iii) After the occurrence of an Event of Default, and during the continuance of such Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. From and after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents will automatically terminate and Lender will without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower will pay to Lender upon demand all Rents to which Lender is entitled.
 - (iv) At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default. No tenant will be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower will not interfere with and will cooperate with Lender's collection of such Rents.
- (c) Borrower represents and warrants to Lender that it has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being

paid off and discharged with the proceeds of the Loan evidenced by the Note), that Borrower has not performed any acts and has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under any Loan Document, and that at the time of execution of this Instrument there has been no prepayment of any Rents for more than 2 months prior to the due dates of such Rents.

- (d) If an Event of Default has occurred and is continuing, then Lender will have each of the following rights and may take any of the following actions:
- (i) Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation, extension, or modification of Leases, the collection of all Rents, the making of Repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable.
 - (ii) Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and without the necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law.
 - (iii) Lender or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the Mortgaged Property.
 - (iv) Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower will surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and will deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents.
 - (v) If Lender takes possession and control of the Mortgaged Property, then Lender may exclude Borrower and its representatives from the Mortgaged Property.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 will not be construed to make Lender a mortgagee-in-

possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

- (e) If Lender enters the Mortgaged Property, Lender will be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.
- (f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes will become an additional part of the Indebtedness as provided in Section 14.
- (g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument will not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

4. Assignment of Leases; Leases Affecting the Mortgaged Property.

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all of Borrower's right, title and interest in, to and under the Leases, including Borrower's right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
 - (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all of Borrower's right, title and interest in, to and under the Leases. Borrower and Lender intend this assignment of the Leases to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
 - (ii) For purposes of giving effect to this absolute assignment of the Leases, and for no other purpose, the Leases will not be deemed to be a part of the Mortgaged Property.
 - (iii) However, if this present, absolute and unconditional assignment of the Leases is not enforceable by its terms under the laws of the Property Jurisdiction, then the Leases will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on the Leases in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b) Until Lender gives Notice to Borrower of Lender's exercise of its rights under this Section 4, Borrower will have all rights, power and authority granted to Borrower under any Lease (except as otherwise limited by this Section or any other provision of this Instrument), including the right, power and authority to modify the terms of any Lease or extend or terminate any Lease. Upon the occurrence of an Event of Default, and during the continuance of such Event of Default, the permission given to Borrower pursuant to

the preceding sentence to exercise all rights, power and authority under Leases will automatically terminate. Borrower will comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits.

- (c)
 - (i) Borrower acknowledges and agrees that the exercise by Lender, either directly or by a receiver, of any of the rights conferred under this Section 4 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and the Improvements.
 - (ii) The acceptance by Lender of the assignment of the Leases pursuant to Section 4(a) will not at any time or in any event obligate Lender to take any action under this Instrument or to expend any money or to incur any expenses.
 - (iii) Except to the extent of Lender's gross negligence or willful misconduct, Lender will not be liable in any way for any injury or damage to person or property sustained by any Person or Persons in or about the Mortgaged Property.
 - (iv) Prior to Lender's actual entry into and taking possession of the Mortgaged Property, Lender will not be obligated for any of the following:
 - (A) Lender will not be obligated to perform any of the terms, covenants and conditions contained in any Lease (or otherwise have any obligation with respect to any Lease).
 - (B) Lender will not be obligated to appear in or defend any action or proceeding relating to the Lease or the Mortgaged Property.
 - (C) Lender will not be responsible for the operation, control, care, management or repair of the Mortgaged Property or any portion of the Mortgaged Property. The execution of this Instrument by Borrower will constitute conclusive evidence that all responsibility for the operation, control, care, management and repair of the Mortgaged Property is and will be that of Borrower, prior to such actual entry and taking of possession.
- (d) Upon delivery of Notice by Lender to Borrower of Lender's exercise of Lender's rights under this Section 4 at any time after the occurrence of an Event of Default, and during the continuance of such Event of Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, by a receiver, or by any other manner or proceeding permitted by the laws of the Property Jurisdiction, Lender immediately will have all rights, powers and authority granted to Borrower under any Lease, including the right, power and authority to modify the terms of any such Lease, or extend or terminate any such Lease.
- (e) Borrower will, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect.

5. **Prepayment Premium.** Borrower will be required to pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Note.
6. **Application of Payments.** If at any time Lender receives, from Borrower or otherwise, any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, then Lender may apply that payment to amounts then due and payable in any manner and in any order determined by Lender, in Lender's discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument, the Note and all other Loan Documents will remain unchanged.
7. **Use of Mortgaged Property.**
 - (a) Borrower will, promptly upon Lender's request, deliver to Lender an executed copy of each residential Lease then in effect. All Leases for residential dwelling units will be on forms acceptable to Lender, will be for initial terms of at least 6 months and not more than 2 years, and will not include options to purchase. No Lease for purposes other than residential occupancy shall be permitted without Lender's prior written consent.
 - (b) Unless required by applicable law, without the prior written consent of Lender, Borrower will not take any of the following actions:
 - (i) Allow changes in the use for which all or any part of the Mortgaged Property is being used at the time Instrument is executed.
 - (ii) Convert any individual dwelling units or common areas to commercial use.
 - (iii) Initiate a change in the zoning classification of the Mortgaged Property or acquiesce to a change in the zoning classification of the Mortgaged Property.
 - (iv) Combine all or any part of the Mortgaged Property with all or any part of a tax parcel which is not part of the Mortgaged Property.
 - (v) Subdivide or otherwise split any tax parcel constituting all or any part of the Mortgaged Property.
 - (vi) Add to or change any location at which any of the Mortgaged Property is stored, held or located unless Borrower (i) gives Notice to Lender within 30 days after the occurrence of such addition or change, (ii) executes and delivers to Lender any modifications of or supplements to Instrument that Lender may require, and (iii) authorizes the filing of any financing statement which may be filed in connection with this Instrument, as Lender may require.
8. **Inspections**

Borrower will permit Lender, its agents, representatives and designees and any interested Governmental Authority to make or cause to be made entries upon and inspections of the Mortgaged Property to inspect, among other things, (i) repairs, (ii) capital replacements, in process and upon completion, and (iii) Improvements (including environmental inspections and tests performed by professional inspection engineers) during normal business hours, or at any other reasonable time, upon reasonable Notice to Borrower if the inspection is to include occupied residential units (which Notice need not be in writing). During normal business hours, or at any other reasonable time, Borrower will also permit Lender to examine all books and records and contracts and bills pertaining to the foregoing. Notice to Borrower will not be required in the case of an emergency, as determined in Lender's discretion, or when an Event of Default has occurred and is continuing.

9. Taxes; Reserves for Taxes, Insurance and Other Charges.

- (a) Subject to the provisions of Sections 9(c) and (d), Borrower will pay or cause to be paid (i) all Taxes when due and before the addition of any interest, fine, penalty or cost for nonpayment.
- (b) Subject to the provisions of Section 9(c), Borrower will (i) pay the expenses of operating, managing, maintaining and repairing the Mortgaged Property (including utilities, repairs and capital Replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added, and (ii) pay Insurance premiums at least 30 days prior to the expiration date of each policy of Insurance, unless applicable law specifies some lesser period.
- (c) If Lender is collecting Tax and Insurance Reserve Deposits, then so long as no Event of Default exists, Borrower will not be obligated to pay any Imposition for which Tax and Insurance Reserve Deposits are being collected, whether Taxes, Insurance premiums or any other individual Impositions, but only to the extent that sufficient Tax and Insurance Reserve Deposits are held by Lender for the purpose of paying that specific Imposition and Borrower has timely delivered to Lender any bills or premium notices that it has received with respect to that specific Imposition. Lender will have no liability to Borrower for failing to pay any Impositions to the extent that (i) any Event of Default has occurred and is continuing, (ii) insufficient Tax and Insurance Reserve Deposits are held by Lender at the time an Imposition becomes due and payable, or (iii) Borrower has failed to provide Lender with bills and premium notices as provided in this Section.
- (d) Borrower, at its own expense, may contest by appropriate legal proceedings, conducted diligently and in good faith, the amount or validity of any Imposition other than Insurance premiums if (i) Borrower notifies Lender of the commencement or expected commencement of such proceedings, (ii) the Mortgaged Property is not in danger of being sold or forfeited, (iii) if Borrower has not already paid the Imposition, Borrower deposits with Lender reserves sufficient to pay the contested Imposition, if requested by Lender, and (iv) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested by Lender, which may include the delivery to Lender of reserves established by Borrower to pay the contested Imposition.
- (e) Borrower will deposit with Lender on the day monthly installments of principal or interest, or both, are due under the Note (or on another day designated in writing by Lender), until the Indebtedness is paid in full, an additional amount sufficient to

accumulate with Lender the entire sum required to pay, when due, Hazard Insurance premiums or premiums for other Insurance required by Lender under this Instrument, Taxes and payments in lieu of taxes, and, assessments or other charges that could become a Lien on the Mortgaged Property. The amounts deposited pursuant to this Section 9 are collectively referred to in Instrument as the "**Tax and Insurance Reserve Deposits.**" The obligations of Borrower for which the Tax and Insurance Reserve Deposits are required are collectively referred to in Instrument as "**Imposition.**" The amount of the Tax and Reserve Deposits must be sufficient to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added. Lender will maintain records indicating how much of the monthly Tax and Insurance Reserve Deposits and how much of the aggregate Tax and Insurance Reserve Deposits held by Lender are held for the purpose of paying Taxes, Insurance premiums, Ground Rent (if applicable) and each other Imposition.

- (f) Deposits. Lender will apply the Tax and Insurance Reserve Deposits to pay Impositions so long as no Event of Default has occurred and is continuing. Lender will pay all Impositions from the Tax and Insurance Reserve Deposits held by Lender upon Lender's receipt of a bill or invoice for an Imposition. Lender will have no obligation to pay any Imposition to the extent it exceeds the amount of the Tax and Insurance Reserve Deposits then held by Lender. Lender may pay an Imposition according to any bill, statement or estimate from the appropriate public office, or insurance company without inquiring into the accuracy of the bill, statement or estimate or into the validity of the Imposition.
- (g) If at any time the amount of the Tax and Insurance Reserve Deposits held by Lender for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender, the excess will be credited against future installments of Tax and Insurance Reserve Deposits. If at any time the amount of the Tax and Insurance Reserve Deposits held by Lender for payment of a specific Imposition is less than the amount reasonably estimated by Lender to be necessary, Borrower will pay to Lender the amount of the deficiency within 15 days after Notice from Lender.
- (h) Borrower will promptly deliver to Lender a copy of all notices of, and invoices for, Impositions.

10. Preservation, Management, and Maintenance of Mortgaged Property

- (a) Borrower will keep the Mortgaged Property in good repair, including the replacement of Personalty and Fixtures with items of equal or better function and quality. Borrower will not commit waste or permit impairment or deterioration of the Mortgaged Property.
- (b) Borrower will not abandon the Mortgaged Property.
- (c) Borrower will restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as Lender may approve in writing, whether or not insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair; provided, however, that Borrower will not be obligated to perform such restoration or repair if (i) no Event of Default has occurred and is continuing, and (ii) Lender has elected to apply any available insurance proceeds and/or condemnation awards to the payment of Indebtedness.

- (d) Borrower will provide for professional management of the Mortgaged Property by a property manager ("Property Manager") satisfactory to Lender at all times under a property management agreement approved by Lender in writing. Borrower will not surrender, terminate, cancel, modify, renew or extend its property management agreement, or enter into any other agreement relating to the management or operation of the Property with Property Manager or any other Person, or consent to the assignment by the Property Manager of its interest under such property management agreement, in each case without the consent of Lender, which consent will not be unreasonably withheld. If at any time Lender consents to the appointment of a new Property Manager, such new Property Manager and Borrower will, as a condition of Lender's consent, execute an assignment of management agreement in a form acceptable to Lender.
- (e) Borrower will give Notice to Lender of and, unless otherwise directed in writing by Lender, will appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security or Lender's rights under Instrument. Borrower will not (and will not permit any tenant or other Person to) remove, demolish or alter the Mortgaged Property or any part of the Mortgaged Property, including any removal, demolition or alteration occurring in connection with a rehabilitation of all or part of the Mortgaged Property

11. Property and Liability Insurance.

- (a) At all times during the term of Instrument, Borrower will maintain, at its sole cost and expense, for the mutual benefit of Borrower and Lender, the following Insurance coverages:
 - (i) Insurance against any peril included within the classification "All Risks of Physical Loss" in amounts not less than the Replacement Cost of the Mortgaged Property. In all cases where any of the Improvements or the use of the Mortgaged Property will at any time constitute legal non-conforming structures or uses under applicable legal requirements of any Governmental Authority, the policy referred to in this Section 11 will include "Ordinance and Law Coverage," with "Loss to the Undamaged Portion of the Building," "Demolition Cost" and "Increased Cost of Construction" endorsements, in the amount of coverage required by Lender and will either include a "Time Element" endorsement or the business income/rental value Insurance for the Mortgaged Property will be endorsed to cover income/rent loss arising out of any increased time necessary to repair or rebuild the Mortgaged Property due to the enforcement of any zoning laws.
 - (ii) Commercial general liability Insurance on an occurrence-based policy form that insures against legal liability resulting from bodily injury, property damage, personal injury and advertising injury, and includes contractual liability coverage and any and all claims, including all legal liability (to the extent insurable) imposed upon Borrower and all Attorneys' Fees and Costs arising out of or connected with the possession, use, leasing, operation, maintenance or condition of the Mortgaged Property with a combined limit of not less than \$2,000,000 in the aggregate and \$1,000,000 per occurrence; umbrella or excess liability coverage with minimum limits in the aggregate and per occurrence of \$3,000,000 in coverage; and if the Borrower owns, leases, hires, rents, borrows, uses, or has

another use on its behalf a vehicle in conjunction with the operation of the Mortgaged Property, vehicle liability Insurance of not less than \$1,000,000 per occurrence. The maximum per occurrence deductible or self-insured retention, or combined deductible or self-insured retention, for all coverage required under this Section 11(a)(ii), will not exceed \$25,000.

- (iii) Business income/rental value Insurance for the Mortgaged Property in an amount equal to at least the estimated gross Rents attributable to the Mortgaged Property for 12 months based on gross Rents for the immediately preceding year and otherwise sufficient to avoid any co-insurance penalty.
- (iv) If the Mortgaged Property contains a central heating, ventilation and cooling system (“**HVAC System**”) where steam boilers and/or other pressurized systems are in operation and are regulated by the Property Jurisdiction, Insurance providing coverage for damage to the HVAC System or other portions of the Mortgaged Property, if the damage is the result of an explosion of steam boilers, pressure vessels or similar apparatus now or hereafter installed at the Mortgaged Property, with minimum limits at least equal to the Replacement Cost of the building housing the HVAC System, including the Replacement Cost of the HVAC System.
- (v) If requested by Lender, Insurance coverage required under Section 11(a)(i) through (iii) will cover perils of terrorism and acts of terrorism. Such coverage may be provided through one or more separate policies, which will be on terms (including amounts) consistent with those required under Section 11(a)(i) through (iii).
- (vi) During any period of restoration, builder’s “All Risk” Insurance (including fire and other perils within the scope of a policy known as a “Causes of Loss – Special Form” or “All Risk” policy) in an amount at least equal to 100% of the sum of the contract or contracts and all materials to complete the restoration (as determined by Lender in Lender’s discretion).
- (vii) Such other Insurance against loss or damage with respect to the Improvements and Personalty located on the Mortgaged Property as required by Lender (including liquor/dramshop and Mold Insurance) provided such Insurance is of the kind for risks from time to time customarily insured against and in such minimum coverage amounts and maximum deductibles as are generally required by institutional lenders for properties comparable to the Mortgaged Property or which Lender may deem necessary in Lender’s discretion.

All Insurance required pursuant to Section 11(a)(i) and Section 11(a)(iii) through (vii) will be referred to as “**Hazard Insurance.**”

- (b) Deductibles. The Insurance required pursuant to Section 9(a)(i), (iv), (v) and (vi) will have a per occurrence deductible of less than \$50,000.
- (c) All Hazard Insurance premiums and premiums for other Insurance required under this Section 11 will be paid in the manner provided in Section 9, unless Lender has designated in writing another method of payment.

- (d) All policies will be issued by a company acceptable to Lender and in a form approved by Lender. All policies of Hazard Insurance will include a standard non-contributing, non-reporting mortgagee clause in favor of, and in a form approved by, Lender. All policies for general liability Insurance will contain a standard additional insured provision, in favor of, and in a form approved by Lender. If any policy referred to in this Section 11 contains a coinsurance clause, such coinsurance clause will be offset by an agreed amount endorsement in an amount not less than the Replacement Cost. All Insurance policies and renewals of Insurance policies required by this Section 11 will be for such periods as Lender may from time to time require. Unless required otherwise by state law, all policies of Hazard Insurance will provide that the insurer will notify the named mortgagee in writing at least 10 days before the cancelation of the policy for nonpayment of the premium or nonrenewal and at least 30 days before cancelation for any other reason.
- (e) Borrower will deliver to Lender a legible copy of each Insurance policy (or duplicate original), and Borrower will promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies. Borrower will ensure that the Mortgaged Property is continuously covered by the required Insurance policies and will deliver to Lender, at least 15 days prior to the expiration of each Insurance policy, evidence acceptable to Lender in Lender's discretion that each policy has been renewed. If the evidence of a renewal does not include a legible copy of the renewal policy (or duplicate original), Borrower will deliver a legible copy of such renewal policy (or duplicate original) in a form satisfactory to Lender in Lender's discretion prior 60 days after the expiration date of the original policy.
- (f) Borrower will comply with all Insurance requirements and will not permit any condition to exist on the Mortgaged Property that would invalidate any part of any Insurance coverage required under Instrument.
- (g) In the event of loss, Borrower will give immediate written notice to the Insurance carrier and to Lender. Borrower authorizes and appoints Lender as attorney in fact for Borrower to make proof of loss, to adjust and compromise any claims under policies of Hazard Insurance, to appear in and prosecute any action arising from such Hazard Insurance policies, to collect and receive the proceeds of Hazard Insurance, to hold the proceeds of Hazard Insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 11 will require Lender to incur any expense or take any action. Lender may, at Lender's option, take one of the following actions:
- (i) Require a "repair or replacement" settlement, in which case the proceeds will be used to reimburse Borrower for the cost of restoring and repairing the Mortgaged Property to the equivalent of its original condition or to a condition approved by Lender ("**Restoration**"). If Lender determines to require a repair or replacement settlement and to apply Insurance proceeds to Restoration, Lender will apply the proceeds in accordance with Lender's then-current policies relating to the Restoration of casualty damage on similar multifamily properties.
 - (ii) Require an "actual cash value" settlement in which case the proceeds may be applied to the payment of the Indebtedness, whether or not then due.

Subject to Section 11(h), Borrower may take the following actions:

- (i) If a casualty results in damage to the Mortgaged Property for which the cost of Repairs will be less than \$25,000, Borrower will have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of Lender so long as the Insurance proceeds are used solely for the Restoration of the Mortgaged Property.
 - (ii) If a casualty results in damage to the Mortgaged Property for which the cost of Repairs will be more than the \$25,000 of Loss Threshold, but less than \$100,000, the Borrower Proof of Loss Maximum, Borrower is authorized to make proof of loss and adjust and compromise the claim without the prior consent of Lender, and Lender will hold the applicable Insurance proceeds to be used to reimburse Borrower for the cost of Restoration of the Mortgaged Property and will not apply such proceeds to the payment of the Indebtedness.
- (h) Lender will have the right to apply Insurance proceeds to the payment of the Indebtedness if Lender determines, in Lender's discretion, that any of the following conditions are met:
- (i) An Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing.
 - (ii) There will not be sufficient funds from Insurance proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Lender to complete the Restoration.
 - (iii) The rental income from the Mortgaged Property after completion of the Restoration will not be sufficient to meet all operating costs and other expenses, deposits to Reserve Funds and Loan repayment obligations relating to the Mortgaged Property.
 - (iv) The Restoration will not be completed by the earlier of (A) at least one year before the Maturity Date (or 6 months before the Maturity Date if re-leasing of the Mortgaged Property will be completed within such 6 month period) or (B) the expiration of the business interruption coverage.
 - (v) The Restoration will not be completed within one year after the date of the loss or casualty.
 - (vi) The casualty involved an actual or constructive loss of more than 30% of the fair market value of the Mortgaged Property, and rendered untenable more than 30% of the residential units of the Mortgaged Property.
 - (vii) After completion of the Restoration the fair market value of the Mortgaged Property is expected to be less than the fair market value of the Mortgaged Property immediately prior to such casualty (assuming the affected portion of the

Mortgaged Property is relet within a reasonable period after the date of such casualty).

- (viii) Leases covering less than 35% of the residential units of the Mortgaged Property will remain in full force and effect during and after the completion of Restoration.
- (i) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender will automatically succeed to all rights of Borrower in and to any Insurance policies and unearned Insurance premiums and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such sale or acquisition.
- (j) Unless Lender otherwise agrees in writing, any application of any Insurance proceeds to the Indebtedness will not extend or postpone the due date of any monthly installments referred to in the Note or change the amount of such installments.
- (k) Borrower agrees to execute such further evidence of assignment of any Insurance proceeds as Lender may require.

12. **Condemnation.**

- (a) Borrower will promptly notify Lender in writing of any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect ("**Condemnation**"). Borrower will appear in and prosecute or defend any action or proceeding relating to any Condemnation unless otherwise directed by Lender in writing. Borrower authorizes and appoints Lender as attorney in fact for Borrower to commence, appear in and prosecute, in Lender's or Borrower's name, any action or proceeding relating to any Condemnation and to settle or compromise any claim in connection with any Condemnation, after consultation with Borrower and consistent with commercially reasonable standards of a prudent lender. This power of attorney is coupled with an interest and therefore is irrevocable. However, nothing contained in this Section 12(a) will require Lender to incur any expense or take any action. Borrower transfers and assigns to Lender all right, title and interest of Borrower in and to any award or payment with respect to (i) any Condemnation, or any conveyance in lieu of Condemnation, and (ii) any damage to the Mortgaged Property caused by governmental action that does not result in a Condemnation.
- (b) Lender may hold such awards or proceeds and apply such awards or proceeds, after the deduction of Lender's expenses incurred in the collection of such amounts (including Attorneys' Fees and Costs) at Lender's option, to the Restoration or repair of the Mortgaged Property or to the payment of the Indebtedness, with the balance, if any, to Borrower. Unless Lender otherwise agrees in writing, any application of any awards or proceeds to the Indebtedness will not extend or postpone the due date of any monthly installments referred to in the Note or change the amount of such installments. Borrower agrees to execute such further evidence of assignment of any Condemnation awards or proceeds as Lender may require.
- (c) Notwithstanding any provision to the contrary in this Section 12, in the event of a partial Condemnation of the Mortgaged Property, as long as no Event of Default, or any event

which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default, has occurred and is continuing, in the event of a partial Condemnation resulting in proceeds or awards in the amount of less than \$50,000, Borrower will have the sole right to make proof of loss, adjust and compromise the claim and collect and receive any proceeds directly without the approval or prior consent of Lender so long as the proceeds or awards are used solely for the Restoration of the Mortgaged Property.

- (d) In the event of a partial Condemnation of the Mortgaged Property resulting in proceeds or awards in the amount of \$50,000 or more, Lender will have the right to exercise its option to apply Condemnation proceeds to the payment of the Indebtedness only if Lender, in Lender's discretion, determines that at least one of the following conditions is met:
- (i) An Event of Default (or any event, which, with the giving of Notice or the passage of time, or both, would constitute an Event of Default) has occurred and is continuing.
 - (ii) There will not be sufficient funds from Condemnation proceeds, anticipated contributions of Borrower of its own funds or other sources acceptable to Lender to complete the Restoration.
 - (iii) The rental income from the Mortgaged Property after completion of the Restoration will not be sufficient to meet all operating costs and other expenses, deposits to Reserve Funds and Loan repayment obligations relating to the Mortgaged Property.
 - (iv) The Restoration will not be completed at least one year before the Maturity Date (or 6 months before the Maturity Date if re-leasing of the Mortgaged Property will be completed within such 6 month period).
 - (v) The Restoration will not be completed within one year after the date of the Condemnation.
 - (vi) The Condemnation involved an actual or constructive loss of more than 15% of the fair market value of the Mortgaged Property, and rendered untenable more than 25% of the residential units of the Mortgaged Property.
 - (vii) After Restoration the fair market value of the Mortgaged Property is expected to be less than the fair market value of the Mortgaged Property immediately prior to the Condemnation (assuming the affected portion of the Mortgaged Property is relet within a reasonable period after the date of the Condemnation).
 - (viii) Leases covering less than 35% of residential units of the Mortgaged Property will remain in full force and effect during and after the completion of Restoration.
- (e) If the Mortgaged Property is sold at a foreclosure sale or Lender acquires title to the Mortgaged Property, Lender will automatically succeed to all rights of Borrower in and to any Condemnation proceeds and awards prior to such sale or acquisition.

13. Environmental Hazards.

- (a) Borrower will comply with all Hazardous Materials Laws applicable to the Mortgaged Property. Without limiting the generality of the previous sentence, Borrower will (i) obtain and maintain all environmental permits required by Hazardous Materials Laws and comply with all conditions of such Environmental Permits, (ii) cooperate with any inquiry by any Governmental Authority, and (iii) comply with any governmental or judicial order that arises from any alleged hazardous activity or condition.
- (b) Borrower will take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of Instrument) to prevent its employees, agents and contractors, and all tenants and other occupants from causing or permitting any violation of Hazardous Materials Laws. Borrower will not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any such violation.
- (c) Borrower will promptly give Notice to Lender upon the occurrence of Borrower's discovery of any violation of Hazardous Materials Laws, or Borrower's receipt of or knowledge of any written complaint, order, notice of violation or other communication from any tenant, manager, Governmental Authority or other person with regard to present or future alleged violation of Hazardous Materials Laws or any other environmental, health or safety matters affecting the Mortgaged Property. No such Notice given by Borrower will relieve Borrower of, or result in a waiver of, any obligation under Instrument, the Note or any other Loan Document.
- (d) Borrower will pay promptly the costs of any environmental inspections, tests or audits, a purpose of which is to identify the extent or cause of or potential for a Prohibited Activity or Condition ("**Environmental Inspections**"), required by Lender in connection with any foreclosure or deed in lieu of foreclosure, or as a condition of Lender's consent to any action requested by Borrower.
- (e) If any investigation, site monitoring, containment, clean-up, restoration or other remedial work ("**Remedial Work**") is necessary to comply with any Hazardous Materials Law or order of any Governmental Authority that has or acquires jurisdiction over the Mortgaged Property or the use, operation or improvement of the Mortgaged Property, or is otherwise required by Lender as a consequence of any violation or threatened violation of Hazardous Materials Laws, Borrower will, by the earlier of (i) the applicable deadline required by Hazardous Materials Law or (ii) 30 days after Notice from Lender demanding such action, begin performing the Remedial Work, and thereafter diligently prosecute it to completion, and must in any event complete the work by the time required by applicable Hazardous Materials Law. If Borrower fails to begin on a timely basis or diligently prosecute any required Remedial Work, Lender may, at its option, cause the Remedial Work to be completed, in which case Borrower will reimburse Lender on demand for the cost of doing so. Any reimbursement due from Borrower to Lender will become part of the Indebtedness.

14. Protection of Lender's Security; Instrument Secures Future Advances.

- (a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including all of the following:
- (i) Lender may pay Attorneys' Fees and Costs.
 - (ii) Lender may pay fees and out-of-pocket expenses of accountants, inspectors and consultants.
 - (iii) Lender may enter upon the Mortgaged Property to make Repairs or secure the Mortgaged Property.
 - (iv) Lender may procure the Insurance required by the Loan Agreement.
 - (v) Lender may pay any amounts which Borrower has failed to pay under the Loan Agreement.
 - (vi) Lender may perform any of Borrower's obligations under the Loan Agreement.
 - (vii) Lender may make advances to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by a Prior Lien.
- (b) Any amounts disbursed by Lender under this Section 14, or under any other provision of this Instrument that treats such disbursement as being made under this Section 14, will be secured by this Instrument, will be added to, and become part of, the principal component of the Indebtedness, will be immediately due and payable and will bear interest from the date of disbursement until paid at the default rate set forth in the Note. Nothing in this Section 14 will require Lender to incur any expense or take any action.

15. Prohibited Transfers.

The occurrence of any of the following Transfers will constitute an Event of Default under this Instrument:

- (a) A Transfer of all or any part of the Mortgaged Property or any interest in the Mortgaged Property, including the grant, creation or existence of any Lien on the Mortgaged Property, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the Lien of this Instrument.
- (b) A Transfer or series of Transfers of any legal or equitable interest of any Guarantor which owns a direct or indirect interest in Borrower that result(s) in such Guarantor no longer owning any direct or indirect interest in Borrower.

- (c) A Transfer or series of Transfers of any legal or equitable interest since the Closing Date that result(s) in a change of more than 50% of the ownership interests (or beneficial interests, if the applicable entity is a trust) in Borrower.
- (d) A Transfer of any general partnership interest in a partnership, or any manager interest (whether a member manager or nonmember manager) in a limited liability company, if such partnership, limited liability company, or trust, as applicable, is the Borrower.
- (e) The grant, creation or existence of any Lien, whether voluntary, involuntary or by operation of law, and whether or not such Lien has priority over the Lien of this Instrument, on any ownership interest in Borrower if the foreclosure of such Lien would result in a Transfer prohibited under Sections 15(b), (c) or (d).

16. Condominium Restrictions

Borrower shall not amend or modify, or consent to the amendment or modification of, the Declaration of Condominium of Silver Pines Condominiums 2 (Phase 1) An Expandable Condominium Community recorded November 18, 2011 as Entry No. 2011008301 in Book 1255 at Page 325 of the Uintah County, Utah, Recorder's Office (the "Declaration") without the prior written consent of Lender.

17. Events of Default.

The breach or default of any obligation of Borrower under this Instrument or an Event of Default under the Note or Loan Agreement will constitute an Event of Default under this Instrument.

- 18. Remedies Cumulative.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument, the Loan Agreement or any other Loan Document or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. Lender's exercise of any particular right or remedy will not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time and as often as Lender chooses.

- 19. Waiver of Statute of Limitations, Offsets, and Counterclaims.** Borrower waives the right to assert any statute of limitations as a bar to the enforcement of the Lien of this Instrument or to any action brought to enforce any Loan Document. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations under this Instrument will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.

20. Waiver of Marshalling.

- (a) Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender will have the right to determine the order in which any or all of the Mortgaged Property will be subjected to the remedies provided in this Instrument, the Note, the Loan Agreement or any other Loan Document or applicable

law. Lender will have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.

- (b) Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Instrument waives any and all right to require the marshalling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Instrument.

21. Further Assurances; Lender's Expenses.

- (a) Borrower will deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents.
- (b) Borrower acknowledges and agrees that, in connection with each request by Borrower under this Instrument or any Loan Document, Borrower will pay all reasonable Attorneys' Fees and Costs and expenses incurred by Lender, including any fees payable in accordance with any request for further assurances or an estoppel certificate pursuant to the Loan Agreement, regardless of whether the matter is approved, denied or withdrawn. Any amounts payable by Borrower under this Instrument or under any other Loan Document will be deemed a part of the Indebtedness, will be secured by this Instrument and will bear interest at the default rate set forth in the Note if not fully paid within 10 days of written demand for payment.

22. Governing Law; Consent to Jurisdiction and Venue. This Instrument will be governed by the laws of the Property Jurisdiction. Borrower agrees that any controversy arising under or in relation to the Note, this Instrument or any other Loan Document may be litigated in the Property Jurisdiction. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction will have jurisdiction over all controversies that may arise under or in relation to the Note, any security for the Indebtedness or any other Loan Document. Borrower irrevocably consents to service, jurisdiction and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing in this Section 13 is intended to limit Lender's right to bring any suit, action or proceeding relating to matters under this Instrument in any court of any other jurisdiction.

23. Successors and Assigns Bound. This Instrument will bind the respective successors and assigns of Borrower and Lender, and the rights granted by this Instrument will inure to Lender's successors and assigns.

24. Joint and Several Liability. If more than one Person signs this Instrument as Borrower, the obligations of such Persons will be joint and several.

25. Relationship of Parties; No Third Party Beneficiary.

- (a) The relationship between Lender and Borrower will be solely that of creditor and debtor, respectively, and nothing contained in this Instrument will create any other relationship

between Lender and Borrower. Nothing contained in this Instrument will constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.

- (b) No creditor of any party to this Instrument and no other Person will be a third party beneficiary of this Instrument or any other Loan Document.

26. Severability; Amendments.

- (a) The invalidity or unenforceability of any provision of this Instrument will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument.
- (b) This Instrument may not be amended or modified except by a writing signed by the party against whom enforcement is sought.

27. Construction.

- (a) The captions and headings of the Sections of this Instrument are for convenience only and will be disregarded in construing this Instrument. Any reference in this Instrument to a "Section" will, unless otherwise explicitly provided, be construed as referring to a Section of this Instrument.
- (b) Any reference in this Instrument to a statute or regulation will be construed as referring to that statute or regulation as amended from time to time.
- (c) Use of the singular in this Instrument includes the plural and use of the plural includes the singular.
- (d) As used in this Instrument, the term "including" means "including, but not limited to" and the term "includes" means "includes without limitation."
- (e) The use of one gender includes the other gender, as the context may require.
- (f) Unless the context requires otherwise any definition of or reference to any agreement, instrument or other document in this Instrument will be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth in this Instrument).
- (g) Any reference in this Instrument to any person will be construed to include such person's successors and assigns.

- 28. Subrogation.** If, and to the extent that, the proceeds of the loan evidenced by the Note, are used to pay, satisfy or discharge a Prior Lien, such loan proceeds or advances will be deemed to have been advanced by Lender at Borrower's request, and Lender will automatically, and without further action on its part, be subrogated to the rights, including Lien priority, of the owner or holder of the obligation secured by the Prior Lien, whether or not the Prior Lien is released.

29. Acceleration; Remedies.

- (a) At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law or provided in this Instrument, the Loan Agreement or in any other Loan Document. Borrower acknowledges that the power of sale granted in this Instrument may be exercised by Lender without prior judicial hearing. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs and costs of documentary evidence, abstracts and title reports.
- (b) If the power of sale is invoked, Trustee will execute a written notice of the occurrence of an Event of Default and of Lender's election to cause the Mortgaged Property to be sold and will record such notice in each county in which the Mortgaged Property is located. Lender or Trustee will mail notice of default in the manner provided by the laws of Utah to Borrower and to such other persons as the laws of Utah prescribe. Trustee will give public notice of sale and will sell the Mortgaged Property according to the laws of Utah. Trustee may sell the Mortgaged Property at the time and place and under the terms designated in the notice of sale in one or more parcels. Trustee may postpone sale of all or any part of the Mortgaged Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Mortgaged Property at any sale.
- (c) Within a reasonable time after the sale, Trustee will deliver to the purchaser at the sale, a deed conveying the Mortgaged Property so sold without any covenant or warranty, express or implied. The recitals in Trustee's deed will be prima facie evidence of the truth of the statements made therein. Trustee will apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including Trustee's fees not to exceed 5% of the gross sales price, Attorneys' Fees and Costs and costs of title evidence; (ii) to the Indebtedness in such order as Lender, in Lender's discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto or to the county clerk of the county in which the sale took place.

30. Reconveyance. Upon payment of the Indebtedness, Lender will request Trustee to reconvey the Mortgaged Property and will surrender this Instrument and the Note to Trustee. Trustee will reconvey the Mortgaged Property without warranty to the person or persons legally entitled thereto. Such person or persons will pay Trustee's reasonable costs incurred in so reconveying the Mortgaged Property.

31. Substitute Trustee. Lender, at Lender's option, may from time to time remove Trustee and appoint a successor trustee to any Trustee appointed under this Instrument. Without conveyance of the Mortgaged Property, the successor trustee will succeed to all the title, power and duties conferred upon the Trustee in this Instrument and by applicable law.

32. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to him at Borrower's address stated in the first paragraph on page one of this Instrument.

33. WAIVER OF TRIAL BY JURY.

- (a) **BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS INSTRUMENT OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER THAT IS TRIABLE OF RIGHT BY A JURY.**
- (b) **BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

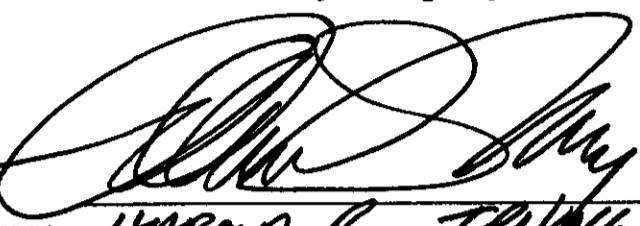
34. Attached Exhibits. The following Exhibits are attached to this Instrument:

Exhibit A	Description of the Land with Tax Parcel ID Included (required)
Exhibit B	Permitted Exceptions

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

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

VERNAL HEIGHTS, LLC
a Utah limited liability company

By: 
Name: HAROLD B. IRVING
Title: MANAGER

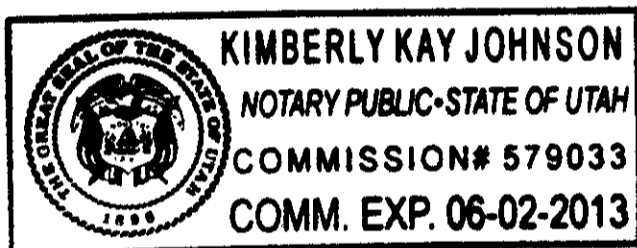
ACKNOWLEDGMENT

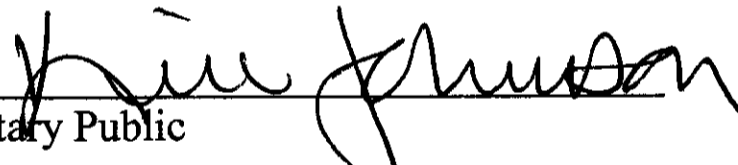
STATE OF Utah)
COUNTY OF Utah)

) ss:

The foregoing instrument was acknowledged before me this 9th of May, 2013, by Harold B. Irving as manager of Vernal Heights, LLC, a Utah limited liability company, on behalf of the limited liability company.

SEAL




Notary Public
Print Name: Kim Johnson

My commission expires: 6-2-13

EXHIBIT A

DESCRIPTION OF THE LAND

Units G101, G102, G103, G104, G105, G106, G107, G108 and Units G201, G202, G203, G204, G205, G206, G207, G208 and Units G301, G302, G303, G304, G305, G306, G307, G308 and Units H101, H102, H103, H104, H105, H106, H107, H108 and Units H201, H202, H203, H204, H205, H206, H207, H208 and Units H301, H302, H303, H304, H305, H306, H307, H308 and Units I101, I102, I103, I104, I105, I106, I107, I108 and Units I201, I202, I203, I204, I205, I206, I207, I208 and Units I301, I302, I303, I304, I305, I306, I307, I308 and Units J101, J102, J103, J104, J105, J106, J107, J108 and Units J201, J202, J203, J204, J205, J206, J207, J208 and Units J301, J302, J303, J304, J305, J306, J307, J308 and Units K101, K102, K103, K104, K105, K106, K107, K108 and Units K201, K202, K203, K204, K205, K206, K207, K208 and K301, K302, K303, K304, K305, K306, K307, K308, all of SILVER PINES CONDOMINIUMS 2, PHASE 1, as the same is identified in the recorded survey map in Uintah County, Utah, as Entry No. 2011008300, in Book 1255, at Page 324 (as said survey map may have heretofore been amended or supplemented) and in the Amended and Restated Declaration of Condominiums recorded as Entry No. 2011008301, in Book 1255, at Page 325 (as said declaration may have heretofore been amended or supplemented). Together with the appurtenant interest in said projects common areas as established in the aforementioned declaration. Also together with a right of access, ingress and egress as set forth in that certain Cross Access/Cross Parking Easement recorded as Entry No. 2011008302, in Book 1255, at Page 396, Uintah County Records.

(05-053-00673, 05-053-00674, 05-053-00675, 05-053-00676, 05-053-00677, 05-053-00678,
05-053-00679, 05-053-00680, 05-053-00681, 05-053-00682, 05-053-00683, 05-053-00684,
05-053-00685, 05-053-00686, 05-053-00687, 05-053-00688, 05-053-00689, 05-053-00690,
05-053-00691, 05-053-00692, 05-053-00693, 05-053-00694, 05-053-00695, 05-053-00696,
05-053-00697, 05-053-00698, 05-053-00699, 05-053-00700, 05-053-00701, 05-053-00702,
05-053-00703, 05-053-00704, 05-053-00705, 05-053-00706, 05-053-00707, 05-053-00708,
05-053-00709, 05-053-00710, 05-053-00711, 05-053-00712, 05-053-00713, 05-053-00714,
05-053-00715, 05-053-00716, 05-053-00717, 05-053-00718, 05-053-00719, 05-053-00720,
05-053-00721, 05-053-00722, 05-053-00723, 05-053-00724, 05-053-00725, 05-053-00726,
05-053-00727, 05-053-00728, 05-053-00729, 05-053-00730, 05-053-00731, 05-053-00732,
05-053-00733, 05-053-00734, 05-053-00735, 05-053-00736, 05-053-00737, 05-053-00738,
05-053-00739, 05-053-00740, 05-053-00741, 05-053-00742, 05-053-00743, 05-053-00744,
05-053-00745, 05-053-00746, 05-053-00747, 05-053-00748, 05-053-00749, 05-053-00750,
05-053-00751, 05-053-00752, 05-053-00753, 05-053-00754, 05-053-00755, 05-053-00756,
05-053-00757, 05-053-00758, 05-053-00759, 05-053-00760, 05-053-00761, 05-053-00762,
05-053-00763, 05-053-00764, 05-053-00765, 05-053-00766, 05-053-00767, 05-053-00768,
05-053-00769, 05-053-00770, 05-053-00771, 05-053-00772, 05-053-00773, 05-053-00774,
05-053-00775, 05-053-00776, 05-053-00777, 05-053-00778, 05-053-00779, 05-053-00780,
05-053-00781, 05-053-00782, 05-053-00783, 05-053-00784, 05-053-00785, 05-053-00786,
05-053-00787, 05-053-00788, 05-053-00789, 05-053-00790, 05-053-00791, 05-053-00792)

EXHIBIT B

PERMITTED EXCEPTIONS

1. Taxes or assessments which are not now payable or which are not shown as existing liens by the records of any taxing authority that levies taxes or assessment on real property or by the public records.
2. Said property is located within the boundaries of Vernal City, Uintah County, Tax District No. 24, and is subject to all assessments and service charges levied thereof.
3. The subject land is located within the bounds of the Uintah Water Conservancy District and is subject to any assessments levied thereunder, recorded in Findings of Fact, Conclusions of Law and Decree Organizing, Establishing and Incorporating Uintah Water Conservancy District, recorded August 19, 1957, as Entry No. 76176, in Book A54, at Page 142, Uintah County Records.
4. Decree, in the Matter of the Organization of the Central Utah Water Conservancy District, and any assessments levied thereunder, recorded March 27, 1964, as Entry No. 102202, in Book 112, at Page 209, Uintah County Records.
5. Resolution Establishing and Confirming the Boundaries of the Ashley Valley Water and Sewer Improvement District, and any assessments levied thereunder, recorded December 31, 1974, as Entry No. 140576, in Book 200, at Page 113, Uintah County Records.
6. Finding and Order Creating the Uintah County Mosquito Abatement District, by Uintah County, and any assessments levied thereunder, recorded July 9, 1975, as Entry No. 143078, in Book 205, at Page 537, Uintah County Records.
7. Easement in favor of Ashley Valley Sewer Management Board, for the purpose of establishing, constructing and maintaining a sewer line, as recorded on May 4, 1981, as Entry No. 182475, in Book 282, at Page 381, Uintah County Recorder's Office, Utah.
8. Easement, and the terms and conditions thereof, in favor of The Mountain States Telephone and Telegraph Company, a Utah Corporation, to construct, operate, maintain, and remove such communications and other facilities, from time to time, upon, over, under and across the subject property, recorded February 23, 1983, as Entry No. 199813, in Book 326, at Page 883, Uintah County Recorder's Office, Utah. (Exact location not disclosed.)
9. Effects of Class D Road Resolution Cooperative Agreement by and between The United States of America Department of the Interior Bureau of Land Management and the Board of County Commissioners Uintah County, Utah, wherein the county assumes responsibility for the construction and maintenance of various county roads, etc., recorded April 22, 1992, as Entry No. 92002016, in Book 527, at Page 211, Uintah County Records.
10. All easements, restrictions and rights of way, as shown or evidenced by the Official Survey Map of Silver Pines Condominiums Phase 2, filed November 18, 2011, as Entry No. 2011008300, Book 1255, at Page 324, Uintah County Recorder's Office, Utah.
11. That certain Closed Drain Pipeline Easement, recorded in Book 170, at Page 204, Uintah County Records, and as shown on a survey prepared by Timberline Engineering & Land Surveying, dated March 24, 2008, entitled Silver Pines Condominiums, LLC.

12. Cross Access/Cross Parking Easement and the terms and conditions set forth thereon, recorded November 18, 2011, as Entry No. 2011008302, in Book 1255, at Page 396, Uintah County Records.

13. Declaration of Condominium of Silver Pines Condominiums 2 (Phase 1), an Expandable Condominium Community, and the matters contained therein, recorded November 18, 2011, as Entry No. 2011008301, in Book 1255, at Page 325, Uintah County Records.

14. Rights of parties in possession as residential tenants only, under unrecorded leases, contracts, or rental agreements, and any claims thereunder.

15. An Ordinance of Vernal City, Utah, approving the creation of a community development and renewal agency in accordance with the provisions of the Utah Code, recorded February 23, 2012, Entry No. 2012001503, in Book 1266, at Page 183, Uintah County Recorder, Utah.

6110451_3