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Mary Ann Trussell, Summit County Utah Recorder

08/26/2014 04:38:06 PM Fee \$36.00

By Cottonwood Title Insurance Agency, Inc.

Electronically Recorded

When Recorded Mail To:

J. Blair Jenkins

Red Bridge Capital II LLC

6440 S. Wasatch Blvd. Suite 200

Salt Lake City, UT 84121

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

CTIA – 72655-AF

Tax ID #FRSTW-6-1AM-X

# TOWNHOME OPTION AGREEMENT

This Townhome Option Agreement (this “**Agreement**”) is dated August 26, 2014, between RED BRIDGE CAPITAL II LLC, a Utah limited liability company (“**Buyer**”), on the one hand; and FROSTWOOD 6 LLC, a Utah limited liability company (“**Seller**”), on the other hand.

This Agreement is entered into in connection with the transactions contemplated by the Construction Loan Agreement dated approximately the same day as this Agreement between Buyer and Seller.

The parties agree as follows:

## 1. **Term and Purchase Price**

1.1 **Option.** Seller agrees to sell the real property located in Summit County, Utah, more particularly described on Exhibit A (the “**Property**”) to Buyer at Buyer’s option (the “**Option**”)

1.2 **Term.** This Agreement may be terminated by any party only after the two-year anniversary of this Agreement upon six-months prior written notice to the other parties.

1.3 **Purchase Price.** The purchase price for the Property (the “**Purchase Price**”) is the *lesser* of (a) \$450,000 and (b) the actual direct cost of the Property acquired without any addition to the cost for overhead or the general management or operation of the applicable parties or the applicable project of which the Property is a part.

## 2. **Exercise of Option and Closing**

2.1 **Exercise.** Buyer may exercise the Option by delivering to Seller during the Term written notice that Buyer has elected to exercise the Option (the “**Option Notice**”).

2.2 **Closing.** The date of closing of the purchase will be the date 60 days after the date of the Option Notice or such earlier date agreed to by the parties (the date the closing occurs, the “**Closing Date**”). Seller and Buyer shall close the purchase of the Property (the “**Closing**”) by Buyer delivering the Purchase Price to Seller and each party executing and delivering all documents necessary to complete the transaction to the title company issuing the title insurance policy or escrow agent handling the closing (“**Title Company**”). The Closing will take place on the Closing Date at the office of the Title Company or such other place as the parties agree. At the Closing, Seller shall deliver to Buyer a fully-signed Special Warranty Deed (the “**Deed**”) in a form reasonably acceptable to Buyer collectively conveying the Property free and clear of all liens and encumbrances together with all other documentation reasonably requested by Buyer.

3. **Title Insurance.** Buyer will receive an ALTA Extended Coverage Owner's title policy in a form reasonably acceptable to Buyer, insuring a merchantable fee simple title in Buyer as of the date and time of the recording of the deed to the Property (the "**Title Policy**"). Seller shall pay the cost of a standard-coverage title policy, and Buyer shall pay the additional cost for the extended coverage title policy.

4. **Closing Costs.** Except as otherwise stated in this Agreement, Closing costs related to the purchase of the Property as contemplated by this Agreement will be allocated among the parties as is typically done in real estate transactions in Summit County, Utah.

5. **Brokers.** Each party represents to the other parties that there has been no broker, real estate agent, finder or similar entity engaged in connection with this Agreement or the sale of the Property from Seller to Buyer when consummated as contemplated by this Agreement. Each party agrees that should any claim be made for brokerage commissions or finders' fees by any broker, agent, finder or similar entity, by, through or on account of any acts of the party or its agent, employees or representatives, that party will indemnify the other parties from all loss and liability (including attorneys' fees and court costs) related to that claim. The provisions of this section will survive the termination of this Agreement and the Closing.

6. **Recordation.** Buyer may record this Agreement or a memorandum of this Agreement in the recording office for the Property.

7. **General Provisions.**

7.1 **Notices.** Each party giving or making any notice, request, demand, or other communication (each, a "**Notice**") pursuant to this Agreement must give the Notice in writing and use one of the following methods of delivery, each of which for purposes of this Agreement is a writing: personal delivery, Registered Mail or Certified Mail (in each case, return receipt requested and postage prepaid), nationally recognized overnight courier (with all fees prepaid), facsimile, or email (with a clear notation at the top of the email in conspicuous type indicating that the email constitutes notice under this Agreement with a specific reference to the full title of this Agreement). Any party giving a Notice must address the Notice to the appropriate person at the receiving party (the "**Addressee**") at the address set forth below or to another Addressee or another address as designated by a party in a Notice pursuant to this section. Except as provided elsewhere in this Agreement, a Notice is effective only if the party giving the Notice has complied with this section and the Addressee has received the Notice. If the Addressee rejects or otherwise refuses to accept the Notice, or if the Notice cannot be delivered because of a change in address for which no Notice was given, then the Notice is deemed delivered upon the rejection, refusal, or inability to deliver. If any Notice is received after 5:00 p.m. on a business day where the Addressee is located, or on a day that is not a business day where the Addressee is located, then the Notice is deemed received at 9:00 a.m. on the next business day where the Addressee is located.

If to Seller:

FROSTWOOD 6 LLC  
Attn: Kent Hoggan  
5911 Fashion Boulevard, Suite 200  
Salt Lake City, Utah 84107  
Facsimile: None  
Telephone (for verification purposes only): 801-706-5155  
Email: kenthoggan@yahoo.com

If to Buyer:

RED BRIDGE CAPITAL II LLC  
Attention: J. Blair Jenkins  
6440 S. Wasatch Blvd., Suite 200  
Salt Lake City, Utah 84121  
Facsimile: 801-278-7818  
Telephone (for verification purposes only): 801-278-7800  
Email: blair@cherokeeandwalker.com

with a copy to:

CARMAN LEHNHOF ISRAELSEN, LLP  
Attention: Mark R. Carman  
299 South Main Street, Suite 1300  
Salt Lake City, Utah 84111  
Facsimile: 801-494-5515  
Telephone (for verification purposes only): 801-649-4929  
Email: mcarman@clilaw.com

7.2 **Amendments.** The parties may amend this Agreement only by a written agreement of the parties that identifies itself as an amendment to this Agreement.

7.3 **Waivers.** The parties may waive any provision in this Agreement only by a writing executed by the party or parties against whom the waiver is sought to be enforced. No failure or delay in exercising any right or remedy or in requiring the satisfaction of any condition under this Agreement, and no act, omission, or course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose stated. A waiver once given is not to be construed as a waiver on any future occasion or against any other person.

7.4 **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement remain in full force if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.

7.5 **Entire Agreement.** This Agreement and the Loan Documents constitute the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement and the Loan Documents. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, no party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

7.6 **Counterparts; Facsimile Signatures.** The parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering this Agreement in the presence of the other parties to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Agreement, a party must produce or account only for the executed counterpart of the party to be charged.

7.7 **Third Party Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than the signatories.

7.8 **Interpretation.** This Agreement will not be construed in favor of or against any party for any reason, including because of authorship.

7.9 **Time of Essence.** With regard to all dates and time periods set forth in this Agreement, time is of the essence.

7.10 **Further Assurances.** Each party and its officers and directors shall use all commercially reasonable efforts to take, or cause to be taken, all actions necessary or desirable to consummate and make effective the transactions this Agreement contemplates. After the closing of the Loan, each party and its officers and directors shall use all commercially reasonable efforts to take, or cause to be taken, all further actions necessary or desirable to carry out the purposes of this Agreement.

7.11 **Governing Law.** The laws of the state of Utah (without giving effect to its conflict of laws principles) govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance, and enforcement.

7.12 **Forum Selection.**

(a) **Designation of Forum.** Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement may bring the legal action or proceeding in the United States District Court for the District of Utah or in any court of the state of Utah sitting in Salt Lake City.

(b) **Waiver of Right to Contest Jurisdiction.** Each party waives, to the fullest extent permitted by law, any objection that the party may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any court of the State of Utah sitting in Salt Lake City, or the United States District Court for the District of Utah; and any claim that any action or proceeding brought in any court specified in this section has been brought in an inconvenient forum.

(c) **Submission to Jurisdiction.** Each party to this Agreement submits to the nonexclusive jurisdiction of the United States District Court for the District of Utah and its appellate courts, and any court of the state of Utah sitting in Salt Lake City and its appellate courts, for the purposes of all legal actions and proceedings arising out of or relating to this Agreement.

7.13 **Rights and Remedies Cumulative.** Any enumeration of rights and remedies set forth in this Agreement is not intended to be exhaustive. Any party's exercise of any right or remedy under this Agreement does not preclude the exercise of any other right or remedy. All of a party's rights and remedies are cumulative and are in addition to any other right or remedy set forth in this Agreement, any other agreement between the parties, or which may now or subsequently exist at law or in equity, by statute or otherwise.

7.14 **Waiver of Jury Trial.** Each party knowingly, voluntarily, and intentionally waives its right to a trial by jury to the extent permitted by law in any action or other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates. This waiver applies to any action or other legal proceeding, whether sounding in contract, tort, or otherwise. Each party acknowledges that it has received the advice of competent counsel.

7.15 **Litigation Expenses.** If any legal action, arbitration, or other proceeding is brought under this Agreement, in addition to any other relief to which the successful or prevailing party or parties (the "**Prevailing Party**") is entitled, the Prevailing Party is entitled to recover, and the non-Prevailing Party shall pay, all reasonable attorneys' fees, court costs, and expenses of the Prevailing Party, even if not recoverable by law as court costs (including, without limitation, all fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy, and post-judgment proceedings), incurred in that action, arbitration, or proceeding and all appellate proceedings. For purposes of this section, the term "attorneys' fees" includes, without limitation, paralegal fees, investigative fees, expert witness fees, administrative costs, disbursements, and all other charges billed by the attorney to the Prevailing Party.

7.16 **Not a Partnership.** This Agreement does not constitute or create a partnership among the parties. No joint venture, partnership, or other joint undertaking is inferred from this Agreement. No party to this Agreement has the right or authority to make representations, act, or incur any debts on behalf of the other. No party is acting as an agent for an undisclosed principal or as a nominee.

7.17 **Advice of Counsel.** Each party acknowledges and agrees that the terms of this Agreement have been completely read and fully understood and voluntarily accepted by the party after having a reasonable opportunity to retain and confer with legal counsel. This

Agreement is entered into after a full investigation by the parties. The parties acknowledge and agree that Carman Lehnhof Israelsen LLP represents Buyer and does not represent Seller or any other person involved in the transactions contemplated by this Agreement.

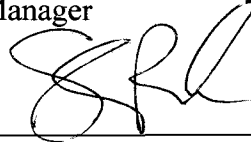
7.18 **Specific Performance.** The parties agree that irreparable damage would occur if any of the provisions of this Agreement were not performed by them in accordance with the terms of this Agreement and that the parties are entitled to specific performance of the terms of this Agreement in addition to any other remedy at law or equity.

[Remainder of page intentionally left blank.]

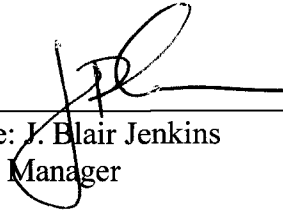
The parties have signed this Townhome Option Agreement on the date stated in the introductory paragraph.

RED BRIDGE CAPITAL II LLC

By: Cherokee & Walker Management, LLC  
Its: Manager



By: \_\_\_\_\_  
Name: Shane Peery  
Title: Manager



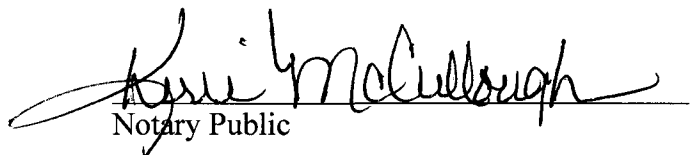
By: \_\_\_\_\_  
Name: J. Blair Jenkins  
Title: Manager

FROSTWOOD 6 LLC

By: \_\_\_\_\_  
Name: Kent Hoggan  
Title: Manager

STATE OF Utah )  
COUNTY OF Salt Lake ) :ss)

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of August, 2014, by Shane Peery, a manager of CHEROKEE & WALKER MANAGEMENT, LLC, a Utah limited liability company.

  
Notary Public



The parties have signed this Townhome Option Agreement on the date stated in the introductory paragraph.

RED BRIDGE CAPITAL II LLC

By: Cherokee & Walker Management, LLC  
Its: Manager

By: \_\_\_\_\_  
Name: Shane Peery  
Title: Manager

By: \_\_\_\_\_  
Name: J. Blair Jenkins  
Title: Manager

FROSTWOOD 6 LLC

By: \_\_\_\_\_  
Name: Kent Hoggan  
Title: Manager

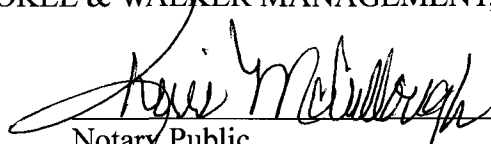
STATE OF \_\_\_\_\_ )  
:ss)  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Shane Peery, a manager of CHEROKEE & WALKER MANAGEMENT, LLC, a Utah limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF Utah )  
COUNTY OF Salt Lake :ss)

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of August, 2014, by J. Blair Jenkins, a manager of CHEROKEE & WALKER MANAGEMENT, LLC, a Utah limited liability company.

  
\_\_\_\_\_  
Notary Public



STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ :ss)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by Kent Hoggan, the manager of FROSTWOOD 6 LLC, a Utah limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF \_\_\_\_\_ )  
:ss)  
COUNTY OF \_\_\_\_\_ )

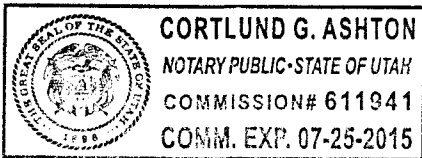
The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2014, by J. Blair Jenkins, a manager of CHEROKEE & WALKER MANAGEMENT, LLC, a Utah limited liability company.

\_\_\_\_\_  
Notary Public

STATE OF UTAH )  
:ss)  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 25 day of AUGUST 2015, 2014, by Kent Hoggan, the manager of FROSTWOOD 6 LLC, a Utah limited liability company.

Cortlund G. Ashton  
\_\_\_\_\_  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

*One of the first five townhomes* that is completed (and for which a temporary occupancy permit is issued) on the real property located in Summit County, Utah, and more particularly described below (with the specific townhome to be selected by Buyer in Buyer's sole discretion):

All of Lot F6, FIRST AMENDED MASTER DEVELOPMENT PLAT OF FROSTWOOD, a Planned Community, according to the official plat thereof, as amended from time to time, on file and of record in the Summit County Recorder's office.

TOGETHER WITH the undivided ownership interest in and to the Common Areas and Limited Common Areas and Facilities, which is appurtenant to said lot as shown on the official recorded plat.

Parcel Number: FRSTW-6-1AM-X (For reference purposes only).