

This instrument was prepared by  
and upon recordation should be  
returned to:

David Greenman  
302 N. El Camino Real, Suite 114  
San Clemente, CA 92672

## ASSIGNMENT OF RENTS AND LEASES

**THIS ASSIGNMENT OF RENTS AND LEASES** (this "**Assignment**") is made and executed as of the \_\_\_\_ day of January, 2019 by **TOWNS OF TRAVERSE MOUNTAIN, LLC**, a Utah limited liability company ("**Borrower**"), whose mailing address is 95 West 100 South, Ste. 340, Logan, Utah 84321, to, in favor of and for the benefit of **STATE FARM LIFE INSURANCE COMPANY**, an Illinois corporation ("**State Farm**"), whose mailing address is One State Farm Plaza, Bloomington, Illinois 61710.

## RECITALS

A. State Farm has made a loan to Borrower (the "**Loan**") which is evidenced by that certain Promissory Note Secured By Deed of Trust executed by Borrower to and in favor of State Farm of even date herewith in the principal amount of Fifteen Million Dollars (\$15,000,000.00) (the "**Note**").

B. The Note is secured by (i) a Deed of Trust, Security Agreement and Fixture Filing executed by Borrower to and in favor of State Farm of even date herewith (the "**Deed of Trust**") granting to State Farm, among other things, a first priority lien and encumbrance upon the **Real Estate** (as defined in the Deed of Trust) and **Improvements** (as defined in the Deed of Trust) legally described in **Exhibit A** attached to this Assignment (the "**Secured Property**"); and (ii) certain other **Loan Documents** (as defined in the Deed of Trust) also executed by Borrower to and in favor of State Farm of even date herewith.

C. As a material inducement to State Farm to make the Loan, Borrower makes this Assignment.

## AGREEMENTS

**NOW, THEREFORE**, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

Loan No. 14639

**1. Assignment of Rents and Leases.**

**1.1. Definitions.** For purposes of this Assignment, the following definitions shall apply:

**1.1.1. "Leases":** All leases now or hereafter existing with respect to any portion of the Secured Property.

**1.1.2. "Guaranties":** All guaranties of the payment of rent by and performance of all other obligations of the tenant(s) under the Leases.

**1.2. Assignment of Rents.** Subject to the terms and conditions of this Assignment, Borrower hereby absolutely, unconditionally and irrevocably transfers, conveys, assigns and grants to State Farm all of Borrower's right, title and interest in and to all rents, issues, profits, proceeds, income, revenues, royalties, advantages, avails, claims against guarantors, security and other deposits (whether in cash, letter of credit or other form), advance rentals, damages, insurance and condemnation proceeds and any and all other payments or benefits now or hereafter derived, directly or indirectly, from the Real Estate and Improvements, whether under the Leases or otherwise (collectively, the "Rents").

**1.3. Assignment of Leases.** Subject to the terms and conditions of this Assignment, Borrower hereby absolutely, unconditionally and irrevocably transfers, conveys, assigns and grants to State Farm all of Borrower's right, title and interest as landlord in, to and under all Leases, now or hereafter existing or entered into, together with any and all Guaranties.

**1.4. Absolute Assignments.** The foregoing assignments of Rents and Leases are present and absolute assignments and not assignments for or as security only. State Farm's right to the Rents and Leases is not contingent upon its possession of the Secured Property.

**1.5. License.** State Farm hereby grants to and confers upon Borrower a revocable license (the "License") to collect and retain the Rents as the same become due and payable under the Leases, but not in excess of thirty (30) days in advance (except for security deposits), so long as, and only so long as, no Event of Default (as defined below) exists under this Assignment. Upon the occurrence of an Event of Default under this Assignment, the License shall immediately and automatically be revoked, cease and terminate without notice; provided, however, that State Farm reserves the right but not the obligation to reinstate, exercisable by written notice to Borrower, to reinstate the License upon any cure of such Event of Default.

Upon any such revocation and termination of the License, State Farm shall have the right to notify all tenants under the Leases to pay the Rents then due and thereafter coming due directly to State Farm. After such revocation and termination of the License, any and all Rents received by Borrower shall be remitted to State Farm not later than three (3) business days following Borrower's receipt of the same.

Borrower hereby authorizes and directs any tenant under the Leases, upon receipt of written notice from State Farm stating that an Event of Default has occurred or exists under this Assignment, to pay directly to State Farm the Rents then due and thereafter coming due under the Leases. Borrower agrees that any tenant shall have the right to rely upon any such notice from State Farm without any obligation, and without any right, to inquire as to whether any such Event of Default has actually occurred or exists and notwithstanding any claim of Borrower to the contrary. Borrower shall have no claim (and hereby waives any claim) against any tenant for the Rents paid by such tenant directly to State Farm following its receipt of any such notice from State Farm.

## **1.6 Covenants.**

**1.6.1. General.** All Leases shall be written on Borrower's standard form of lease or on such other form of lease, each of which shall have been approved by State Farm. Borrower shall furnish State Farm with executed copies of all Leases within fifteen (15) days after written demand. All proposed Leases and extensions, renewals, amendments or modifications of existing Leases shall (a) be at rental rates (including rental concessions) that are at least equal to those charged for comparable properties within the submarket area of the Secured Property; (b) have been negotiated at arm's length with bona fide independent third party tenants; and (c) in Borrower's prudent business judgment, not materially impair the value of the Secured Property; provided, however, that no more than two (2) units may be leased to employees of Borrower or affiliates at reduced rental rates in the discretion of Borrower. All Leases shall state that they are subordinate to the Deed of Trust and shall include an agreement by the tenant to attorn to State Farm.

**1.6.2. Negative Covenants.** Except in the ordinary course of business and in the exercise of Borrower's prudent business judgment in the operation of a multi-family apartment project, Borrower shall not, without the prior written consent of State Farm, (a) cancel or terminate any Lease; or (b) enter into, alter, amend, terminate, modify or change the terms of any Guaranties or Lease.

**1.6.3. Affirmative Covenants.** So long as no Event of Default is in existence under any of the Loan Documents and subject to Sections 1.6.1 and 1.6.2 above, Borrower may enter into, extend, renew, amend, modify or permit the assignment or sublease of any of the Leases.

## **2. Default and Remedies.**

### **2.1. Default.**

**2.1.1.** It shall constitute an event of default (an "**Event of Default**") of and under this Assignment and under the other Loan Documents if Borrower shall fail to perform or observe any of the covenants, agreements or conditions of this Assignment and such failure shall remain uncured for thirty (30) days after notice to Borrower of the occurrence of such failure.

**2.1.2.** It shall constitute an Event of Default of and under this Assignment if there shall occur under the Note, Deed of Trust and other Loan Documents an “**Event of Default**” as defined in any of those Loan Documents.

**2.2. Remedies.**

**2.2.1.** Upon the occurrence of an Event of Default, the License shall automatically be revoked, cease and terminate without notice to Borrower and without regard to the adequacy or inadequacy of State Farm’s security under this Assignment, the Deed of Trust or the other Loan Documents. Thereupon, State Farm shall be entitled to exercise any and all rights and remedies provided in this Assignment, the Deed of Trust and the other Loan Documents. The application of any Rents collected by State Farm shall be in accordance with the terms of the Deed of Trust.

**2.2.2.** The rights and remedies provided in this Assignment shall not be deemed exclusive of any rights or remedies granted to State Farm in the Deed of Trust or by law, but shall be deemed special and additional rights and remedies and shall be cumulative with those rights and remedies granted in the Deed of Trust or by law.

**3. Miscellaneous.**

**3.1. Perfection.** This Assignment shall be perfected upon its recordation in the official public records of Utah County, Utah. Neither possession of the Rents nor the appointment of a receiver of the Secured Property shall be required for such perfection.

**3.2. Assignment.** State Farm may assign its rights in and under this Assignment to any subsequent holder of the Note and Deed of Trust and to any person acquiring title to the Secured Property through foreclosure of the Deed of Trust or otherwise.

**3.3. Obligations.** State Farm shall not be obligated to perform or discharge, nor, by its acceptance of this Assignment, does it undertake to perform or discharge, any obligation, duty or liability of Borrower, as landlord under the Leases, or otherwise. Nothing herein contained shall be construed as causing State Farm to be a “Mortgagee in Possession” and State Farm shall have no liability of a Mortgagee in Possession by exercising its rights under this Assignment, all such liability being expressly waived and released by Borrower.

**3.4. Ownership.** Borrower represents and warrants that (a) it is the absolute owner of the Rents and Leases with full right, power and authority to execute and deliver this Assignment; and (b) there is no outstanding assignment or pledge of the Rents or Leases or any one thereof.

**3.5. Notices.** Any Notice required to be given hereunder shall be given in the manner specified in the Deed of Trust.

**3.6. Conflict.** In the event of a conflict between the provisions of this Assignment and any other Loan Documents, this Assignment shall control.

**3.7. Cooperation.** Borrower agrees to cooperate with any reasonable request of State Farm to implement the provisions of this Assignment.

**3.8. Successors and Assigns.** Whenever the word "Borrower" is used herein, it is agreed and understood that the same includes and shall be binding upon Borrower's successors and assigns and any party holding title to the Secured Property by, through or under Borrower. All of the rights, powers, privileges and immunities herein granted and assigned to State Farm shall also inure to its successors and assigns, including all holders of the Note and Deed of Trust.

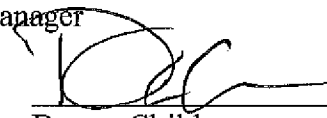
**3.9. Waiver of Trial by Jury.** Borrower hereby waives, to the fullest extent permitted by Applicable Law (as defined in the Note), the right to trial by jury in any action, proceeding or counterclaim filed by any party, whether in contract, tort or otherwise, relating, directly or indirectly, to this Assignment or any acts or omissions of Borrower in connection therewith or contemplated thereby.

SIGNATURE ON FOLLOWING PAGE

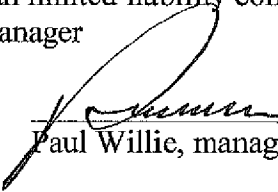
IN WITNESS WHEREOF, Borrower has executed this Assignment as of the day and year first above written.

**TOWNS OF TRAVERSE MOUNTAIN, LLC,**  
a Utah limited liability company

By: Town House Management, LLC,  
a Utah limited liability company,  
its manager

By:   
Darren Child, manager

By: PW Management, LLC,  
a Utah limited liability company,  
its manager

By:   
Paul Willie, manager

State of Utah )

County of Cache )

On this 11 day of January, in the year 2019, before me, Nikki Brickler, a notary public, personally appeared, Darren Child, proved on the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to this instrument and acknowledged he/she/they executed the same.

WITNESS my hand and official seal.

Signature Nikki Brickler



State of Utah )

County of Cache )

On this 11 day of January, in the year 2019, before me, Nikki Brickler, a notary public, personally appeared, Paul Willie, proved on the basis of satisfactory evidence to be the person (s) whose name (s) is/are subscribed to this instrument and acknowledged he/she/they executed the same.

WITNESS my hand and official seal.

Signature Nikki Brickler



**EXHIBIT A**  
**Legal Description**

**Parcel 1:**

Lot 101, Plat "A", SEASONS TOWNS, A RESIDENTIAL SUBDIVISION, according to the official plat thereof, on file and of record in the office of the Utah County Recorder, State of Utah.

*Tax Parcel No. 66-529-0101*

**Parcel 2:**

An Easement Estate for a perpetual exclusive non-public easement for the benefit of the development of Plat "A", SEASONS TOWN SUBDIVISION more particularly described as follows:

Beginning at a point on the Northerly side of Lot 101, Plat "A", SEASONS TOWNS SUBDIVISION, according to the Official Plat thereof on file in the Office of the Utah County Recorder located North 0°17'58" West along the Section line 1,487.14 feet and West 1,282.00 feet from the Southeast Corner of Section 30, Township 4 South, Range 1 East, Salt Lake Base and Meridian; thence Southwesterly along the arc of a 187.00 foot radius non-tangent curve (radius bears North 15°28'04" West) to the right 7.76 feet through a central angle of 2°22'40" (chord: South 75°43'16" 7.76 feet); thence South 76°54'37" West 52.99 feet; thence North 47°32'47" East 76.52 feet to the Westerly line of said plat; thence South 4°03'37" East along said plat 37.83 feet to the point of beginning. Recorded as Entry No. 24887:2017 in the office of the Utah County Recorder.