

RECORDING REQUESTED BY)
WHEN RECORDED MAIL TO:)
)
)
Nelson Brothers BYU Apartments, LLC)
c/o Nelson Brothers Professional Real Estate, LLC)
16B Journey)
Aliso Viejo, CA 92656)
Attention: Patrick Nelson)



ENT 7444:2014 PG 1 of 14
JEFFERY SMITH
UTAH COUNTY RECORDER
2014 Feb 03 4:33 pm FEE 37.00 BY SS
RECORDED FOR PROVO LAND TITLE COMPANY

Above Space for Recorder's Use

TENANTS IN COMMON AGREEMENT

This Tenants in Common Agreement (this "Agreement") is made and effective as to each party listed in Exhibit A attached hereto and incorporated herein, as amended from time to time (each sometimes referred to as a "Tenant in Common" or collectively as the "Tenants in Common"), as of the date such Tenant in Common acquired an Interest in the Property (as defined below), with reference to the facts set forth below. The Company, as referred to herein, shall mean Nelson Brothers BYU Apartments, LLC.

A. The Tenants in Common will acquire the real property and improvements known as Alpine Apartments, Squire Apartments and an associated duplex, an apartment project with a total of 28 units and 115 beds, with an address of 891 N 900 East and 876 E 900 North, Provo, Utah, as more particularly described in Exhibit B attached hereto and incorporated herein (the "Property").

B. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of the Property and ownership of their respective interests in the Property (the "Interests") and to delegate authority and responsibility for the intended further operation and management of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties agree as set forth below.

1. Nature of Relationship of Tenants in Common.

1.1 No Partnership. The Tenants in Common shall each own their Interests as tenants in common. The Tenants in Common do not intend by this Agreement to create a partnership or joint venture among themselves but rather intend merely to set forth the terms and conditions on which each of them shall hold its respective Interest. In addition, the Tenants in Common do not intend to create a partnership or joint venture with the Property Manager (as defined below). Therefore, each Tenant in Common hereby elects to be excluded from the provisions of Subchapter K of Chapter 1 of the Internal Revenue Code of 1986, as amended (the "Code"), with respect to its tenant in common ownership of the Property. The exclusion elected by the Tenants in Common hereunder shall commence with the execution of this Agreement.

1.2 Covenant to Report and Own Interests as Direct Owners and Not a Partnership. Each Tenant in Common hereby covenants and agrees to report on its federal and state income tax returns all items of income, deduction and credits that result from its Interests. All such reporting shall be consistent with the exclusion of the Tenants in Common from Subchapter K of the Code, commencing with the first taxable year following the execution of this Agreement. Each Tenant in Common covenants and agrees to refrain from any conduct or action inconsistent with owning the Interests as tenants in common as set forth in this Agreement. Further, each Tenant in Common covenants and agrees not to notify the Commissioner of Internal Revenue that such Tenant in Common desires that Subchapter K of the Code apply to the Tenants in Common. Each Tenant in Common hereby agrees to indemnify, protect, defend and hold the other Tenants in Common free and harmless from all costs, liabilities, tax consequences and expenses (for example, taxes, interest and penalties), including, without limitation, attorneys' fees and costs, that may result from any Tenant in Common violating any of the foregoing covenants and agreements.

1.3 Voting – General. The Tenants in Common must unanimously approve the following: (i) except as otherwise provided in Section 2.6 of the Property and Asset Management Agreement, entering into any lease with respect to the Property or any substitution, material amendment or renewal thereof; (ii) any management or brokerage agreement, including the Property and Asset Management Agreement (as defined below), and any renewal, modification or amendment thereof, provided that a replacement property manager must be selected if the Property and Asset Management Agreement is not renewed; (iii) any financing or refinancing of the Property; and (iv) any sale of the Property (other than a sale pursuant to the Call Option described in Section 11 or a sale pursuant to the Purchase Option described in the Property and Asset Management Agreement). All other decisions regarding the Property shall be made only with the approval of the Tenants in Common who own more than fifty percent (50%) of the Interests.

1.4 Approval of the Tenants in Common. Whenever in this Agreement the consent or approval of the Tenants in Common is required or otherwise requested, each Tenant in Common generally shall have thirty (30) days after the date on which the request for consent or approval is submitted to it in which to approve or disapprove of the matter in writing (unless a longer or shorter period for response is expressly provided for herein or in such request). A Tenant in Common who does not disapprove of the matter in writing within such thirty (30) day period (or such longer or shorter period expressly provided for herein or in the request for approval) shall be deemed to have approved the matter.

1.5 No Agency. Except as provided herein, no Tenant in Common is authorized to act as agent, to act on behalf of or to do any act that will bind any other Tenant in Common, or to incur any obligation with respect to the Property.

1.6 Management. Concurrently with the acquisition of the Property, the Tenants in Common will enter into a Property and Asset Management Agreement (the “**Property and Asset Management Agreement**”) with Nelson Brothers Property Management, Inc., a California corporation (the “**Property Manager**”). Pursuant to the Property and Asset Management Agreement, the Property Manager shall be the sole and exclusive manager of the Property to act on behalf of the Tenants in Common with respect to the management, operation, maintenance and leasing of the Property during the term of the Property and Asset Management Agreement.

2. Tenants in Common Approvals. The Tenants in Common hereby unanimously consent to (a) this Agreement; (b) the Property and Asset Management Agreement and all of the terms thereof, including, without limitation, the Property Manager’s Purchase Option contained therein; and (c) the mortgage loan in the original principal amount of approximately \$2,222,500.00, which Loan will be secured by a first mortgage on the Property (the “**Loan**”) from Bank of American Fork or such other bank or financial institution as may be chosen by the Company in its sole discretion for the purpose of providing the Loan (together with its successors and assigns, the “**Lender**”) being used to finance the acquisition of the Property as described in the Private Placement Memorandum pursuant to which Interests are being or have been acquired (together with all addendums or supplements thereto, the “**PPM**”). As used in this Agreement, the term “**Loan Documents**” means all documents evidencing the Loan or executed and delivered to or for the benefit of the Lender in connection with the Loan. All of the terms, covenants and conditions of the Property and Asset Management Agreement are hereby incorporated herein as if set forth in full herein.

3. Income and Liabilities. Except as otherwise provided herein and in the Property and Asset Management Agreement, each of the Tenants in Common shall be entitled to all benefits and obligations of ownership of the Property in accordance with their Interests. Accordingly, each of the Tenants in Common shall (a) be entitled to all benefits of ownership of the Property, on a gross and not a net basis, including, without limitation, all items of income, revenue and proceeds from the sale or refinance or condemnation of the Property, in proportion to their respective Interests, and (b) bear, and shall be liable for the payment of, all expenses of ownership of the Property, on a gross and not a net basis, including, by way of illustration but not limitation, all operating expenses, reserves (including lender-mandated reserves and amounts as may be reasonably determined by the Property Manager to be retained for reserves or improvements in accordance with the Property and Asset Management Agreement) and expenses of sale, financing or refinancing or condemnation, in proportion to their respective Interests.

4. Co-Tenant's Obligations. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including, without limitation:

4.1 Documents. Executing documents required in connection with a sale, financing or refinancing of the Property in accordance with **Section 5** and such additional documents as may be required under this Agreement with respect to the Property, the Property and Asset Management Agreement or any loan encumbering the Property, provided that such actions have been properly approved by the Tenants in Common in accordance with **Sections 1.3** and **1.4**.

4.2 Additional Funds. Each Tenant in Common will be responsible for a *pro rata* share (based on each Tenant in Common's respective Interests, except as otherwise provided in the Property and Asset Management Agreement) of any future cash needed for any purpose in connection with the ownership, operation and maintenance of the Property as determined by the Property Manager pursuant to the Property and Asset Management Agreement or as required by any loan secured by the Property. In addition to the foregoing, in the event that any lender under financing secured by the Property elects to pursue one or more, but not all, of the Tenants in Common based on the joint and several liability of the Tenants in Common under such financing, then any Tenant in Common that paid (either in cash or through foreclosure of its Interest) in excess of its allocable share of such financing shall be entitled to reimbursement by the remaining Tenants in Common for any excess share paid by such Tenant in Common. Further, any Tenant in Common who breaches any of the recourse exceptions to the non-recourse nature of any such financing shall be liable to reimburse any other Tenant in Common (or party(ies) related thereto or owner(s) thereof) for all amounts paid by such other party (or if such other party likewise was responsible for such breach, then such Tenant in Common shall pay an amount equal to its allocable share thereof). To the extent that any Tenant in Common fails to pay such funds within fifteen (15) days after the Property Manager delivers notice that such additional funds are required, any other Tenant(s) in Common may loan such funds to the nonpaying Tenant(s) in Common, who shall be liable on a full recourse basis to repay the paying Tenant(s) in Common the amount of any such loan plus interest thereon at the rate of fourteen percent (14%) per annum (but not more than the maximum rate allowed by law) within thirty-one (31) days of funding the loan. In addition, the Property Manager is hereby authorized and directed to pay the Tenant(s) in Common entitled to reimbursement the sum loaned (with interest thereon as provided above) out of future cash from operations or from the sale, financing or refinancing of the Property or other distributions otherwise due the nonpaying Tenant(s) in Common pursuant to the Property and Asset Management Agreement. The remedies against a nonpaying Tenant in Common provided for herein are in addition to all other remedies that otherwise may be available, including, by way of illustration but not limitation, the right to obtain a lien against the Interests of the nonpaying Tenant in Common to the extent allowed by law and by any third party financing secured by the Property. By executing this Agreement, each Tenant in Common agrees (i) that any such short term loan will be made on a full recourse basis, (ii) that, if such Tenant in Common is a single member limited liability company (or if a multi-member limited liability company owned solely by a husband and wife), then such loan shall be recourse to the members of the limited liability company and (iii) to repay such loan within thirty-one (31) days of funding. Notwithstanding the foregoing, all of the foregoing recourse, rights and remedies are subject and subordinate in all respects to the Loan and the terms and conditions of the Loan Documents, and in no event will loans among Tenants in Common exist or be deemed to exist at any time that the Loan or any portion thereof is outstanding.

5. Sale or Encumbrance of Property.

5.1 Sale. The Company or its affiliates (including the Property Manager) shall be entitled to seek and negotiate the terms of financing for the Property, including loans secured by the Property. During the term of the Property and Asset Management Agreement, the Property Manager shall have the exclusive right to seek and negotiate the terms of any sale of the Property (or portions thereof) to third-party purchasers. In accordance with **Section 1.3** and **Section 2**, any loan encumbering the Property and any sale of the Property shall be subject to prior unanimous approval by the Tenants in Common, which approval shall be communicated to the Company or the Property Manager, as applicable, by written response to a written request by the Company or the Property Manager, as applicable. Any such written request of the Company or the Property Manager, as applicable, shall be accompanied by the loan documents or purchase agreement or a detailed summary thereof setting forth the material terms of the proposed loan or sale.

5.2 Distribution of Loan or Sales Proceeds. Notwithstanding any other provision of this Agreement, proceeds of a loan or sale shall be distributed at the closing of the loan or the sale as follows:

(a) To the extent necessary, the proceeds shall first be used to pay in full the Loan or any other loan encumbering title to the Property.

(b) To the extent necessary, the proceeds shall next be used to pay in full all unsecured loans made to the Tenants in Common with respect to the Property.

(c) The proceeds shall next be used to pay all outstanding costs and expenses incurred in connection with the holding, marketing and sale of the Property, including all fees due to the Company and its affiliates (including the Property Manager).

(d) The remaining proceeds (if any) shall be paid to each of the Tenants in Common in accordance with their respective Interests as provided in **Section 3**.

6. Possession. The Tenants in Common intend to lease the Property at all times. Accordingly, no Tenant in Common shall have the right to occupy or use the Property at any time during the term of this Agreement.

7. Transfer or Encumbrance. Subject to compliance with the specific terms of this Agreement, compliance with applicable securities laws and compliance with the terms of the Loan and the Loan Documents and any other loan (and associated loan agreement and documents) secured by the Property, each Tenant in Common may sell, transfer, convey, pledge, encumber or hypothecate its Interests (or any part thereof). Any such transferee shall take such Interests subject to this Agreement and the Property and Asset Management Agreement, and the transferor and transferee shall execute and cause to be recorded an assignment and assumption agreement whereby (a) the transferor assigns to the transferee all of the transferor's right, title and interest in and to this Agreement and the Property and Asset Management Agreement; and (b) the transferee assumes and agrees to perform faithfully and to be bound by all of the terms, covenants, conditions, provisions and agreements of this Agreement and the Property and Asset Management Agreement with respect to the Interests to be transferred. Upon execution and recordation of such assumption agreement, the transferee shall become a party to this Agreement and the Property and Asset Management Agreement without further action by the other Tenants in Common.

8. Right of Partition.

8.1 General. Subject to **Section 8.2**, the Tenants in Common agree generally that any Tenant in Common (and any Successor of any Tenant in Common, as defined in **Section 12.1**) shall have the right, while this Agreement remains in effect, to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with and to the extent provided by applicable law. The Tenants in Common acknowledge and agree that partition of the Property may result in a forced sale by all of the Tenants in Common. To avoid the inequity of a forced sale and the potential adverse effect on the investment by the other Tenants in Common, the Tenants in Common agree that, as a condition precedent to filing a partition action, the Tenant in Common filing such action shall follow the buy-sell procedure set forth in **Section 10**.

8.2 Lender Mandate. Notwithstanding the general provisions of **Section 8.1**, if required by a lender as a condition of making a loan to the Tenants in Common to acquire the Property or refinance any loan secured by the Property, the Tenants in Common shall be deemed to have waived their right to file a complaint or institute any proceeding at law or in equity to have the Property partitioned in accordance with applicable local law. Each Tenant in Common hereby acknowledges and agrees that the Lender requires each Tenant in Common to waive such rights to institute any such partition proceeding, and each Tenant in Common hereby waives such rights to the fullest extent permitted under applicable law so long as all or any portion of the Loan remains unpaid.

9. Bankruptcy. The Tenants in Common agree that the following shall constitute an "Event of Bankruptcy" with respect to any Tenant in Common and its successors: (a) if a receiver, liquidator or trustee is appointed for any Tenant in Common; (b) if any Tenant in Common becomes insolvent, makes an assignment for the benefit of creditors or admits in writing the inability to pay its debts generally as they become due; or (c) if any

petition for bankruptcy, reorganization, liquidation or arrangement pursuant to federal bankruptcy law, or similar federal or state law, is filed by or against, consented to, or acquiesced in by any Tenant in Common; *provided, however*, that, if such appointment, adjudication, petition or proceeding was involuntary and not consented to by such Tenant in Common, then, upon the same not being discharged, stayed or dismissed within thirty (30) days thereof. To avoid the inequity of a forced sale and the potential adverse effect on the investment of the other Tenants in Common, the Tenants in Common agree that, as a condition precedent to entering into this Agreement, the Tenant in Common causing such Event of Bankruptcy shall follow the buy-sell procedure set forth in **Section 10**.

10. **Buy-Sell Procedure.** Upon the filing of a partition action in accordance with **Section 8.1** (to the extent that such right has not been waived as provided in **Section 8.2**) or the occurrence of an Event of Bankruptcy in accordance with **Section 9**, the Tenant in Common filing such action or the subject of such Event of Bankruptcy (hereinafter, "**Seller**") shall first make a written offer (the "**Offer**") to sell its Interests to the other Tenants in Common at a price equal to (a) the Fair Market Value (as defined below) of Seller's Interests minus (b) all selling, prepayment or other costs that would apply in the event that the Property was sold on the date of the Offer. The other Tenants in Common shall be entitled to purchase a portion of Seller's Interests in proportion to their respective undivided Interests. In the event that any Tenant in Common elects not to purchase its share of Seller's Interests, the other Tenants in Common shall be entitled to purchase additional Interests, *pro rata*, based on their Interest. "**Fair Market Value**" shall mean the fair market value of Seller's undivided interest in the Property on the date the Offer is made as determined in accordance with the procedures set forth below. The other Tenants in Common shall have twenty (20) days after delivery of the Offer to accept the Offer. If any or all of the other Tenants in Common (all Tenants in Common electing to accept the Offer, "**Purchaser**") accept the Offer, then Seller and Purchaser shall commence negotiation of the Fair Market Value within fifteen (15) days after the Offer is accepted. The Tenants in Common constituting Purchaser shall appoint a single Tenant in Common (the "**Purchaser Representative**") to negotiate the Fair Market Value with Seller, based on the average of all proposals received by the Purchaser Representative from the Tenants in Common constituting Purchaser (the "**Purchaser's Proposal**"); *provided, however*, that the Purchaser Representative shall not be authorized to accept a Fair Market Value that is different from the Purchaser's Proposal without the approval of a majority of the Tenants in Common constituting Purchaser. If the parties do not agree, after good faith negotiations, within ten (10) days, then each party shall submit to the other a proposal containing the Fair Market Value that the submitting party believes to be correct (the "**Proposal**"); *provided, however*, that, if Purchaser consists of more than one person or party, then Purchaser shall submit the Purchaser's Proposal through the Purchaser Representative. If either party fails to timely submit a Proposal, then the other party's submitted Proposal shall determine the Fair Market Value. If the parties timely submit a Proposal, then the Fair Market Value shall be determined by final and binding arbitration in accordance with the procedures set forth below. Within seven (7) days after delivery of the last Proposal, the Company shall appoint an MAI certified real estate appraiser who shall have been active full-time over the previous five (5) years in the appraisal of comparable property located in the county or city in which the Property is located to act as the arbitrator. If Purchaser and Seller are unable to agree upon a single arbitrator, then Purchaser (acting through the Purchaser Representative) and Seller each, within five (5) days after the meeting, shall select an arbitrator that satisfies the foregoing qualifications. The two (2) arbitrators so appointed, within fifteen (15) days after their appointment, shall appoint a third (3rd) arbitrator meeting the foregoing qualifications; *provided, however*, that, if one party fails to appoint an arbitrator in such period, then the one appointed arbitrator shall make such determination itself without the need for an additional, or third, arbitrator to be appointed or chosen. The determination of the arbitrator shall be limited solely to the issue of whether Seller's or Purchaser's Proposal most closely approximates the Fair Market Value. The decision of the arbitrator shall be made within thirty (30) days after appointment. The arbitrator shall have no authority to create an independent structure of Fair Market Value or prescribe or change any of the components or the structure thereof; the sole decision to be made shall be which Proposal most closely corresponds to the Fair Market Value of the Property. The decision of the single arbitrator or majority of the three (3) arbitrators shall be binding on Purchaser and Seller. If Purchaser or Seller fails to appoint an arbitrator within the time period specified above, then the arbitrator appointed by one of them shall reach a decision that shall be binding on the parties. The cost of the arbitrator shall be paid equally by Seller and Purchaser. The arbitration shall be conducted in Provo, Utah, in accordance with Utah law, as modified by this Agreement. The parties agree that the Federal Arbitration Act, Title 9 of the United States Code, shall not apply to any arbitration hereunder. The parties shall have no discovery rights in connection with the arbitration. The decision of the arbitrator may be submitted to any court of competent jurisdiction by the party designated in the decision. Such party shall submit to the appropriate court a form of judgment incorporating the decision of the arbitrator, and such judgment, when signed by a judge of the court, shall become final for all purposes and shall be entered by the clerk of the court on the judgment roll of

the court. If one party refuses to arbitrate a dispute that is subject to arbitration hereunder and the party demanding arbitration obtains a court order directing the other party to arbitrate, then the party demanding arbitration shall be entitled to all of its reasonable attorneys' fees and costs in obtaining such order, regardless of which party ultimately prevails in the matter. BY EXECUTING THIS AGREEMENT YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ARBITRATION OF DISPUTES PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY UTAH LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY EXECUTING THIS AGREEMENT YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF UTAH LAW. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. Once the Fair Market Value of the Property is determined, Purchaser shall be obligated to acquire Seller's Interest and, in the event that more than one Tenant in Common constitutes Purchaser, then each such Tenant in Common shall acquire a portion of such Interest equal to the percentage of each such Purchaser Tenant in Common's existing Interest as compared against the total Interests held by the Purchasers collectively or such other percentage as is approved by the parties constituting Purchaser. The closing of the purchase shall occur at a mutually agreeable title company where the Property is located within thirty (30) days from the date a Fair Market Value is determined, whether by agreement or arbitration. Closing costs and prorations shall be allocated as is standard practice where the Property is located.

11. Call Option. The Tenants in Common shall have the right, but not the obligation, to purchase the Interests of Tenants in Common who do not consent to a sale or refinancing of the Property or to take action to prevent or cure an event of default under the Loan or the Loan Documents or under any other loan secured by the Property (the "**Dissenting Tenants in Common**") when Tenants in Common owning seventy percent (70%) or more of the Property do consent to such a sale or refinancing or consent to take action to prevent or cure an event of default under the Loan or the Loan Documents or under any other loan secured by the Property (the "**Consenting Tenants in Common**").

(a) Grant of Call Rights. Each of the Tenants in Common who is a Dissenting Tenant in Common hereby grants to each Consenting Tenant in Common the right, but not the obligation, to purchase its Interests pursuant to the terms and conditions of this Agreement (the "**Call Option**") when there is (i) a *bona fide* offer to purchase or refinance the Property that is acceptable to the Consenting Tenants in Common or (ii) an imminent or actual default the Loan or the Loan Documents or under any other loan secured by the Property (as determined by the Company, in its sole and absolute discretion), and the Company proposes a definite action to cure such default, but there is not unanimous consent by the Tenants in Common to accept such offer or take such action.

(b) Exercise of Call Rights. The Call Option may be exercised only by the Consenting Tenants in Common. The Call Option shall be exercised by providing written notice of exercise thereof to the Dissenting Tenants in Common within thirty (30) days of the exercise of the Call Option. The Interests to be purchased pursuant to the Call Option will be offered to the Consenting Tenants in Common on a *pro rata* basis according to their Interests. All such purchases shall be for cash. The Call Option shall terminate simultaneously with the termination of this Agreement. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetency of a Tenant in Common shall not cause the termination of this Agreement.

(c) Determination of Value and Payment. The purchase price for the Interests under the Call Option (the "**Purchase Price**") shall be the greater of (A) the appraised fair market value of the Property (without any discounts) as determined by an independent third party appraiser selected by the Company or (B) the value of the Property determined by any written offer to buy the Property in existence at the time of exercise, in each case multiplied by the percentage of the Property represented by such Interest and reduced by the same percentage of any debt encumbering the Property.

(i) Proceeds from the Purchase Price, net of all loans secured by the Property and all outstanding costs and expenses of the Property, shall be paid to the Dissenting Tenants in Common in proportion to their Interests.

(ii) Payment of the Purchase Price to Dissenting Tenants in Common will occur upon the earlier of (a) the closing of the sale, financing or refinancing of the Property by the Consenting Tenants in Common or (b) one hundred eighty (180) days after exercise of the Call Option.

(d) Closing. Upon receipt of the written notice of exercise of the Call Option, the Dissenting Tenants in Common shall deliver to the Company all required signatures and documentation necessary for the transfer of their Interests. The Consenting Tenants in Common, as the case may be, shall deliver to the Dissenting Tenants in Common the net proceeds from the Purchase Price in the time and manner set forth in this Agreement.

(e) Power of Attorney. The Company shall at all times during the term of this Agreement have a special and limited power of attorney as the attorney-in-fact for each Dissenting Tenant in Common, with power and authority to act in the name and on behalf of each such Dissenting Tenant in Common, to execute, acknowledge and swear to in the execution, acknowledgment and filing of documents that are not inconsistent with the provisions of this Agreement and that may include, without limitation, any contract for purchase or sale of real estate, and any deed, deed of trust, mortgage or other instrument of conveyance or encumbrance, with respect to the Interests and/or the Property or any other instrument or document that may be required to effectuate the sale of the Property.

(i) This power of attorney may be exercised by the Company for each of the Dissenting Tenants in Common by the signature of the Company acting as attorney-in-fact for all of the Dissenting Tenants in Common, together with a list of all Dissenting Tenants in Common executing such instrument by their attorney-in-fact or by such method as may be required or requested in connection with the recording or filing of any instrument or other document so executed.

(ii) This power of attorney shall be irrevocable and shall survive an assignment by a Dissenting Tenant in Common of all or any portion of its undivided Interest in the Property. Furthermore, this power of attorney shall survive the bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetency of the granting Dissenting Tenant in Common.

(iii) The Company shall promptly furnish to a Dissenting Tenant in Common a copy of any document executed by the Company pursuant to such power of attorney.

12. General Provisions.

12.1 Mutuality; Reciprocity; Runs With The Land. All provisions, conditions, covenants, restrictions, obligations and agreements contained herein or in the Property and Asset Management Agreement are made for the direct, mutual and reciprocal benefit of each and every part of the Property; shall be binding on and shall inure to the benefit of each of the Tenants in Common and their respective heirs, executors, administrators, successors, assigns, devisees, representatives, lessees and all other persons acquiring any undivided interest in the Property or any portion thereof whether by operation of law or any manner whatsoever (collectively, "Successors"); shall create mutual, equitable servitudes and burdens upon the undivided interest in the Property of each Tenant in Common in favor of the interest of every other Tenant in Common; shall create reciprocal rights and obligations between the respective Tenants in Common, their interests in the Property and their Successors; and shall, as to each of the Tenants in Common and their Successors, operate as covenants running with the land, for the benefit of the other Tenants in Common pursuant to applicable law, including, without limitation, the laws of the State of Utah. It is expressly agreed that each covenant contained herein or in the Property and Asset Management Agreement (a) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Tenants in Common; (b) runs with the undivided interest in the Property of each Tenant in Common; and (c) benefits and is binding on each Successor during its ownership of any undivided interest in the Property and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction, provision, covenant, right and limitation contained herein or in the Property and Asset Management Agreement, whether or not such person or entity expressly assumes such obligations or whether or not any reference to this Agreement or the Property and Asset Management Agreement is contained in the instrument conveying such interest in the Property to such person or entity. The Tenants in

Common agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement and the Property and Asset Management Agreement upon acquisition of an undivided interest in the Property as if such person was a Tenant in Common initially executing this Agreement.

12.2 Binding Arbitration. Except as expressly provided under **Section 10**, any dispute, claim or controversy arising out of or related to this Agreement, the breach hereof, the termination, enforcement, interpretation or validity hereof or an investment in the Interests shall be settled by binding arbitration in Orange County, California, in accordance with the laws of the State of California for agreements made in and to be performed in that state, and judgment entered upon the award rendered therein may be enforced in any court of competent jurisdiction. Such arbitration shall be administered by JAMS pursuant to its Streamlined Arbitration Rules and Procedures and conducted by an arbitration panel consisting of one (1) member, which shall be the mediator if mediation has occurred. The arbitrator (or mediator) shall be experienced in the area of real estate and limited liability companies and shall be knowledgeable with respect to the subject matter area of the dispute. The losing party shall bear all fees and expenses of the arbitrators (or mediators), other tribunal fees and expenses, reasonable attorneys' fees of both parties, all costs of producing witnesses and all other reasonable costs or expenses incurred by them or the prevailing party, or such costs shall be allocated by the arbitrators (or mediators). The arbitration panel shall render a decision within thirty (30) days following the close of presentation by the parties of their cases and any rebuttal.

12.3 Attorneys' Fees. If any arbitration, action or proceeding is instituted between all or any of the Tenants in Common arising from or related to or with this Agreement, then the Tenant in Common or Tenants in Common prevailing in such action or arbitration shall be entitled to recover from the other Tenant in Common or Tenants in Common all of its or their costs of action, proceeding or arbitration, including, without limitation, reasonable attorneys' fees and costs as fixed by the court or arbitrator therein.

12.4 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein.

12.5 Headings. The headings inserted in this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

12.6 Section References. All references in this Agreement to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement unless otherwise expressly specified.

12.7 Governing Law; Venue. This Agreement shall be governed by and construed under the internal laws of the state in which the Property is located without regard to choice of law rules. Any action arising out of or relating to this Agreement shall be subject to binding arbitration in Orange County, California in accordance with **Section 12.2**.

12.8 Modification. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought. The assumption by a new Tenant in Common of this Agreement through the acquisition of an undivided interest in the Property, whether pursuant to the execution of a new Tenants in Common Agreement with identical terms as this Agreement, the execution of a counterpart of this Agreement or the execution of an assignment and assumption instrument applicable to this Agreement, shall not constitute a modification of this Agreement requiring the consent to, or execution of, such instrument by the other Tenants in Common under this Agreement.

12.9 Notice and Payments. Any notice to be given or other document or payment to be delivered by any party to any other party hereunder may be delivered in person, or may be deposited in the United States mail, duly certified or registered, return receipt requested, with postage prepaid, or by FedEx or other similar overnight delivery service or by email to the Company or Tenants in Common as follows:

c/o Nelson Brothers BYU Apartments, LLC
16B Journey
Aliso Viejo, CA 92656
Attention: Patrick Nelson

with a copy to

Frank Eichenlaub, Esq.
Seyfarth Shaw LLP
131 South Dearborn, Suite 2400
Chicago, IL 60603
feichenlaub@seyfarth.com

The Company shall be responsible for forwarding such notices to the Tenants in Common at the addresses or email addresses specified by the Tenants in Common from time to time. Any party hereto may from time to time, by written notice to the others, designate a different address that shall be substituted for the one specified above. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given and received (a) upon personal delivery or (b) as of the third (3rd) business day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth above or (c) the immediately-succeeding business day after deposit with FedEx or other similar overnight delivery service or upon the delivery of notice by email.

12.10 Successors and Assigns. All provisions of this Agreement shall inure to the benefit of and shall be binding on the Successors of the parties hereto.

12.11 Term. This Agreement shall commence as of the date the Tenants in Common acquire the Property and shall terminate at such time as the Tenants in Common or their successors or assigns no longer own the Property as tenants in common. In no event shall this Agreement continue beyond December 31, 2035. The bankruptcy, death, dissolution, liquidation, termination, incapacity or incompetence of a Tenant in Common shall not cause the termination of, or have any other effect on, this Agreement.

12.12 Waivers. No act of any Tenant in Common shall be construed to be a waiver of any provision of this Agreement, unless such waiver is in writing and signed by the Tenant in Common affected. Any Tenant in Common hereto may specifically waive any breach of this Agreement by any other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

12.13 Counterparts. This Agreement may be executed in counterparts, each of which, when taken together, shall be deemed one fully executed original.

12.14 Severability. If any portion of this Agreement becomes illegal, null or void or against public policy, for any reason, or is held by any court of competent jurisdiction to be illegal, null or void or against public policy, then the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

12.15 Securities Laws. THE UNDIVIDED INTERESTS IN THE PROPERTY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AND THEY HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION OR BY THE SECURITIES REGULATORY AUTHORITY OF ANY STATE, NOR HAS ANY COMMISSION OR AUTHORITY PASSED UPON OR ENDORSED THE MERITS OF THE OFFERING OR THE ACCURACY OR ADEQUACY OF ANY DISCLOSURE MADE IN CONNECTION THEREWITH. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THE INTERESTS MAY NOT BE RESOLD WITHOUT REGISTRATION UNDER THE SECURITIES ACT OF 1933 AND APPLICABLE STATE SECURITIES LAWS OR EXEMPTION THEREFROM.

12.16 Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

12.17 Limitations. At no time shall there be more than thirty-five (35) Tenants in Common, and any transfer that would result in there being more than thirty-five (35) Tenants in Common shall be null and void, and the Interest that would have been transferred shall be held in trust for the economic benefit of the purported transferor. Further, no Tenant in Common will enter into or engage in any business activity that is not permitted under Section 6.11 of Revenue Procedure 2002-22.

12.18 Subordination. Until the Loan has been satisfied in full, this Agreement and all of the terms and provisions hereof shall in all respects be subject to and subordinate to the terms and conditions of the Loan Documents, and the Lender shall be an express third party beneficiary of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Loan Documents, the terms of the Loan Documents shall prevail and control. The Tenants in Common each agree that they shall not engage in any activity that would violate the terms of any of the Loan Documents. After the Loan has been satisfied in full, this Agreement and all of the terms and provisions hereof shall in all respects be subject and subordinate to the terms of all documents evidencing and securing any other loan secured by a mortgage or deed of trust on the Property, and the lender of such loan shall be an express third party beneficiary of this Agreement. In the event of a conflict between the terms of this Agreement and the terms of such loan documents, the terms of such loan documents shall prevail and control. The Tenants in Common each agree that they shall not engage in any activity that would violate the terms of any of such loan documents.

12.19 Notice from Lender; Service of Process. Until the Loan is satisfied in full or the Lender approves an alternative appointment in writing, each Tenant in Common hereby appoints and designates the Company as the agent of each Tenant in Common (a) to receive any notice or other communication from the Lender on behalf of each Tenant in Common and (b) to receive service of process on behalf of each Tenant in Common in connection with the Loan and the Loan Documents. While any other loan secured by the Property remains outstanding (unless the lender thereof approves an alternative appointment in writing), each Tenant in Common hereby appoints and designates the Company as the agent of each Tenant in Common (a) to receive any notice or other communication from such lender on behalf of each Tenant in Common and (b) to receive service of process on behalf of each Tenant in Common in connection with such loan.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

TENANTS IN COMMON:

NB-BYU APARTMENTS TIC 3. LLC,
a Delaware limited liability company

By: NB BYU 1 HOLDCO LLC,
a Delaware limited liability company
Its: Sole Member

By: NELSON BROTHERS PROPERTY
MANAGEMENT, INC.,
a California corporation
Its: Manager

By: Patrick Nelson
Patrick Nelson, President

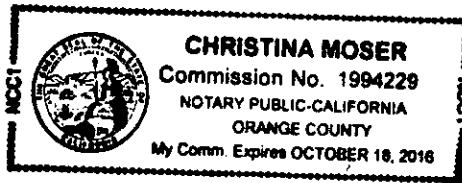
STATE OF CALIFORNIA)
COUNTY OF Orange)

On January 14th, 2014, before me, Christina Moser, personally appeared Patrick Nelson, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)



NELSON BROTHERS BYU APARTMENTS, LLC, a Delaware limited liability company

By: NELSON BROTHERS PROPERTY MANAGEMENT, INC., a California corporation

Its: Manager

By: Patrick Nelson
Patrick Nelson, President

STATE OF CALIFORNIA)
COUNTY OF Orange)

On January 30th, 2014, before me, CHRISTINA MOSER, personally appeared Patrick Nelson, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

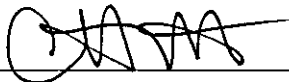
Signature  (Seal)



EXHIBIT A**Tenants in Common and Percentage Interest**

<u>Tenants in Common</u>	<u>Percentage Interest</u>
NELSON BROTHERS BYU APARTMENTS, LLC a Delaware limited liability company	53.4336%
NB-BYU APARTMENTS TIC 3. LLC, a Delaware limited liability company	13.1341%

EXHIBIT B**Legal Description of the Property****Parcel # 22-015-0075**

COM N 89 DEG 16' 28" E 1083.34 FT & S 469.29 FT FR N 1/4 COR. SEC. 6, T7S, R3E, SLB&M.; N 89 DEG 49' 33" W 84.8 FT; N 0 DEG 28' 29" E 69.55 FT; S 89 DEG 22' 29" E 84.8 FT; S 0 DEG 28' 29" W 68.89 FT TO BEG. AREA 0.135 AC. ALSO COM N 89 DEG 16' 28" E 932.54 FT & S 466.33 FT FR N 1/4 COR. SEC. 6, T7S, R3E, SLB&M.; N 89 DEG 24' 31" W 4.03 FT; N 0 DEG 52' 0" E 159.63 FT; S 89 DEG 24' 31" E 68.94 FT; S 0 DEG 28' 29" W 159.63 FT; N 89 DEG 24' 39" W 66 FT TO BEG. AREA 0.255 AC. ALSO COM N 89 DEG 16' 28" E 931.2 FT & S 627.43 FT FR N 1/4 COR. SEC. 6, T7S, R3E, SLB&M.; N 89 DEG 37' 31" W 7.11 FT; N 0 DEG 52' 0" E 147.51 FT; S 89 DEG 1' 0" E 1.98 FT; N 0 DEG 52' 0" E 13.63 FT; S 89 DEG 24' 31" E 70.03 FT; S 0 DEG 28' 29" W 160.88 FT; N 89 DEG 37' 31" W 66 FT TO BEG. AREA 0.268 AC. TOTAL AREA .657 AC.

Parcel # 22-015-0076

COM N 89 DEG 16' 28" E 999.86 FT & S 308.25 FT FR N 1/4 COR. SEC. 6, T7S, R3E, SLB&M.; S 0 DEG 28' 29" W 90.18 FT; S 89 DEG 22' 29" E 84.8 FT; N 0 DEG 28' 29" E 74.23 FT; ALONG A CURVE TO L (CHORD BEARS: N 44 DEG 28' 1" W 22.65 FT, RADIUS = 16 FT); N 89 DEG 24' 31" W 68.89 FT TO BEG. AREA 0.174 AC.