

Entry 2013000508  
Book 1313 Page 656-675 \$50.00  
17-JAN-13 12:47  
RANDY SIMMONS  
RECORDER, UINTAH COUNTY, UTAH  
AFFILIATED FIRST TITLE  
321 E STATE RD, STE 200 AMERICAN F  
Rec By: CARADIE ASH , DEPUTY

Entry 2013000508  
Book 1313 Page 656

**When Recorded, Return to:**

**Zions First National Bank  
One South Main Street, Suite 470  
Real Estate Banking Group  
Salt Lake City, UT 84133  
Attention: Stephanie Asay**

**ABSOLUTE AND UNCONDITIONAL SUBORDINATION AGREEMENT**

**NOTICE:**

**THIS ABSOLUTE AND UNCONDITIONAL SUBORDINATION AGREEMENT RESULTS IN THE SUBORDINATED SECURITY INTEREST BECOMING SUBJECT TO AND OF LOWER PRIORITY THAN THE LIEN OF ANOTHER OR LATER SECURITY INTEREST IN THE PROPERTY.**

**THIS ABSOLUTE AND UNCONDITIONAL SUBORDINATION AGREEMENT (“Agreement”), dated effective as of the 11th day of January, 2013 (“Effective Date”), is made by and among Silver Pines Condominiums 2 LLC, a Utah limited liability company, (the “Borrower”), Zions First National Bank, a national banking association, (“Senior Lender”), and Dynamic Lending, LLC (“Subordinate Lender”). This Agreement is joined in contemporaneously herewith by all the Guarantors, if any, for the Senior Loan (as is defined below) to bind each of them to the terms of this Agreement pursuant to that certain Senior Guarantor Joinder And Ratification Agreement To Absolute And Unconditional Subordination Agreement of even date herewith (the “Ratification”).**

## RECITALS

A. Borrower owns certain real property located in Uintah County, State of Utah, legally described on Exhibit "A" attached hereto and by reference incorporated herein (the "**Property**"). Borrower intends to construct one or more buildings consisting of 108 Units (the "**Units**") and all related infrastructure, utilities, streets and fixtures required for the same (collectively the "**Improvements**") pursuant to the plans and specifications (collectively the "**Plans**") submitted to and approved by Senior Lender for the Property. The Improvements together with the Property as constructed pursuant to the Plans are collectively referred to herein as the "**Project**".

B. Senior Lender is lending to Borrower the sum of up to Nine Million One Hundred Eighty Thousand Dollars (\$9,180,000.00) ( the "**Senior Loan**") to finance a portion of the construction of the Project, provided that Senior Lender has a first lien secured by the Project, which lien is senior in right, time and interest to all other liens on the Project. Said Senior Loan is evidenced by that certain Promissory Note dated January 11, 2013 (the "**Senior Note**") and secured by, among other things, a Construction and Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing encumbering the Project, and granted and given by Borrower for the benefit of Senior Lender and recorded as Entry No. 2013000501 in Book 1313 at Page 609 *et seq.* of the Official Records of the Office of the Recorder of Uinta County, State of Utah (the "**Trust Deed**"), together with that certain Assignment of Leases dated January 11, 2013, encumbering the Project, granted and given by Borrower for the benefit of Senior Lender, and recorded as Entry No. 2013000506 in Book 1313 at Page 637 *et seq.* of the Official Records of the Office of the Recorder of Uintah County, State of Utah (the "Assignment of Leases"), and that certain Deed Restriction dated January 11, 2013, encumbering the Project, granted and given by Borrower for the benefit of Senior Lender, and recorded as Entry No. 2013000507 in Book 1313 at Page 649 *et seq.* of the Official Records of the Office of the Recorder of Uintah County, State of Utah (the "**Deed Restriction**"), collectively the "**Trust Deed**", together with the Continuing Guaranty, Assignment of Contracts and Permits, and all other documents executed in connection with the Loan, are hereinafter called the "**Senior Security Instruments**". The Senior Security Instruments, together with the Senior Note and all other documents now or hereinafter evidencing or securing the Senior Loan are collectively referred to herein as the "**Senior Loan Documents**", which Senior Loan Documents include any and all additions, extensions, consolidations, amendments, modifications and supplements to each of the respective Senior Loan Documents.

C. Subordinate Lender did agree to provide financing to Silver Pines Condominiums, LLC in the amount of Three Million Dollars (\$3,000,000.00) (the "**Subordinate Loan**") as evidenced by a promissory note dated April 21, 2011 ("**Subordinate Note**") secured by the Project. The Subordinate Note as of the Effective Date has an outstanding-unpaid principal balance of Three Million Dollars (\$3,000,000.00). To secure the Subordinate Loan, among other things, Silver Pines Condominiums, LLC did execute and deliver to Subordinate Lender that certain trust deed dated April 21, 2011 encumbering the Project and recorded on April 21,

2011, under Entry No. 2011002920 in Book 1230, Page 598 of the Official Records of the Office of the County Recorder, Uintah County, State of Utah (the "*Subordinate Trust Deed*") (the Subordinate Trust Deed and any other security instruments executed in connection with the Subordinate Trust Deed are referred to herein as the "*Subordinate Security Instruments*"). The Subordinate Security Instruments, together with the Subordinate Note and all other documents now or hereinafter evidencing or securing the Subordinate Loan are referred to herein collectively as the "*Subordinate Loan Documents*," which Subordinate Loan Documents include any and all additions, extensions, consolidations, amendments, modifications and supplements to the Subordinate Loan Documents.

D. Senior Lender, Subordinate Lender and Borrower desire to set forth the priority and relationship of the Senior Loan, the Subordinate Loan and their respective obligations to each other, and upon a default, their respective obligations under the loan documents; also, as a condition precedent to Senior Lender executing this Agreement and advancing any funds under the Senior Loan, Senior Lender requires that each of the Borrower and Subordinate Lender execute this Agreement and each guarantor, if any, to the Senior Loan (in the singular a "**Guarantor**" and collectively in the plural the "**Guarantors**") execute and deliver the Ratification (as defined above) to Senior Lender requiring that Subordinate Lender must absolutely and unconditionally subordinate the Subordinate Loan and the Subordinate Loan Documents and all rights, obligations and liens of the Subordinate Lender arising under or with respect to the Subordinate Loan and the Subordinate Loan Documents to the Senior Loan and the Senior Loan Documents and to bind the respective Guarantors, if any, to the obligations of this Agreement.

#### **AGREEMENT**

**IN CONSIDERATION OF THE FOREGOING, THE AGREEMENTS AND OBLIGATIONS CONTAINED HEREIN AND FOR OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED BY THE PARTIES, AND TO INDUCE SENIOR LENDER TO FUND THE SENIOR LOAN AND TO ACCEPT THE SENIOR LOAN DOCUMENTS, SUBORDINATE LENDER HEREBY ABSOLUTELY AND UNCONDITIONALLY SUBORDINATES THE SUBORDINATE LOAN AND ALL THE SUBORDINATE LOAN DOCUMENTS TO THE SENIOR LOAN AND THE SENIOR LOAN DOCUMENTS AS SET FORTH HEREIN, AND THE PARTIES AGREE AND BIND THEMSELVES AS FOLLOWS WITH RESPECT TO THE RELATIONSHIP BETWEEN THE SENIOR LOAN AND THE SUBORDINATE LOAN:**

**1. Absolute Subordination of the Subordinate Loan and Subordinate Loan Documents.**

*1.1.* The Subordinate Loan and the Subordinate Loan Documents are and all the liens, rights and obligations created by or arising under the Subordinate Loan and the

Subordinate Loan Documents shall be and the same are hereby made and shall continue to be at all times absolutely and unconditionally junior, subordinate and subject to: (i) the liens, rights and obligations created by or arising under the Senior Loan and the Senior Loan Documents, (ii) all of the terms, covenants and conditions contained in the Senior Loan Documents, and (iii) all increases in the indebtedness and/or advances under the Senior Loan (principal or interest) from time to time regardless of the reason, purpose, use or application of the proceeds advanced or the property or improvements benefitted by such increase and secured by the Senior Security Instruments or evidenced by the Senior Note, and (iv) all extensions, consolidations, amendments, modifications and supplements, existing or hereafter made from time to time, to the Senior Loan Documents (items (i) through and inclusive of item (iv) above are hereinafter collectively referred to as the "Subordination"). Without in any manner limiting the scope of the Subordination given by Subordinate Lender under this Section 1.1, said Subordination automatically applies to all existing and all future advances, extensions, amendments or other modifications of the Senior Loan and the Senior Loan Documents; and the Subordinate Loan Documents shall be and are automatically and absolutely Subordinate to the Senior Loan Documents without the need for any consent, confirmation, written reaffirmation or acknowledgement by Subordinate Lender or Borrower of said Subordination, including but not limited to each of the following advances:

*1.1.1.* regardless of whether a default has occurred under the Senior Loan or the Senior Loan Documents, any election by Senior Lender pursuant to the Senior Loan Documents to advance funds sufficient to complete the construction, marketing, maintenance, operation, management and/or sale of all or any portion of the Project and/or the Units in the Project shall be superior and senior to the Subordinate Loan, even though additional advances for such purposes under the Senior Loan may result in the aggregate amount of the Senior Loan advanced by Senior Lender exceeding the original principal amount set forth above;

*1.1.2.* regardless of whether a default has occurred under the Senior Loan or the Senior Loan Documents, any advance made by Senior Lender to preserve or protect the Project and/or Senior Lender's lien position or the seniority of the Senior Loan in the Project pursuant to the Senior Loan Documents, including but not limited to advances to pay *ad valorem* or real property taxes or assessments, insurance premiums for property or liability coverage on the Project, or builder's risk coverage for the Project, actions and costs to protect or preserve or prevent waste or destruction of all or any portion of the Project, advances to pay off any lien claims or defend Senior Lender's senior-lien priority or Borrower's title in the Project, advances to pay collection costs or other expenses (whether or not reimbursable by Borrower under the Senior Loan Documents), or to address any other risks reasonably perceived by Senior Lender as jeopardizing its Senior Loan, the Senior Loan Documents or its senior-security position in the Project shall be superior and senior to the Subordinate Loan; and/or

*1.1.3.* any and all other advances, extensions, amendments, or other modifications of the Senior Loan Documents made pursuant to this Subsection 1.1.3 shall be

superior and senior to the Subordinate Loan, whether or not they increase the amount of the Senior Loan.

**1.2** In addition to advances made pursuant to Section 1.1 above under the Senior Loan, the Subordinate Loan Documents and the liens thereof shall be and are expressly subject, junior and subordinate to any and all advances or other sums expressly authorized under or pursuant to the Senior Loan Documents, in whatever amount and however or whenever made, together with all interest thereon, and to all expenses, charges and fees authorized and incurred pursuant to the Senior Loan Documents, including, without limitation thereon, any and all advances, interest, expenses, charges and fees that may increase the indebtedness under the Senior Loan, so long as the foregoing are expressly authorized by the Senior Loan Documents.

**2. Debt Subordination and Restrictions on Repayment of the Subordinate Indebtedness.** Until Repayment in Full of the Senior Loan (as defined below), except as otherwise expressly set forth herein, none of the Subordinate Loan (principal or interest) is to be paid off or repaid to Subordinate Lender prior to the payment in full of the Senior Loan to Senior Lender. Subordinate Lender hereby subordinates all rights of collection and payment and monies and collateral and property held by or to be paid to Subordinate Lender in connection with or as security under the Subordinate Loan to Senior Lender and the Senior Loan and the Senior Loan Documents and agrees that any right which Subordinate Lender may have to receive or collect any payments or money or rents or profits or property from Borrower or any Guarantor of the Senior Loan, if any, with respect to any amount due (or from time to time due) under the Subordinate Loan or the Subordinate Loan Documents (collectively the "**Subordinate Indebtedness**") or any other indebtedness from time to time due from Borrower to Subordinate Lender, shall be subordinate and is hereby subordinated to the Senior Loan and the Senior Loan Documents and Senior Lender's right to receive payments and/or money and/or collateral and/or property and/or rents and/or profits from the Borrower and/or each Guarantor, if any, in payment of the Senior Loan, as then, or from time to time, due or payable under the Senior Loan Documents (collectively the "**Senior Indebtedness**"). Until such time as (a) the Senior Loan and the Senior Indebtedness is paid in full and all sums now or hereafter secured or evidenced by the Senior Loan Documents are paid in full (and Senior Lender has no further obligation to fund any amounts under the Senior Loan or to make any advances thereunder) and (b) Borrower has complied in full with all of Borrower's obligations under the Senior Loan Documents and (c) Senior Lender has released of record the Senior Loan Documents (all of the foregoing items (a), (b) and (c) collectively being referred to herein as "**Repayment in Full of the Senior Loan**"), neither Borrower nor any Guarantor of the Senior Loan, if any, shall make any payments, whatsoever, of principal, interest or any other amounts or monies due on the Subordinate Loan to or for the benefit of the Subordinate Lender or in payment of the Subordinate Loan and all such sums paid to or for the benefit of Subordinate Lender shall be held in trust for the benefit of Senior Lender and the Senior Loan.

**3. Subordinated Security Documents.** Subordinate Lender and Borrower hereby represent, warrant, certify and verify to Senior Lender that, to the knowledge of each, as of the

date of this Agreement, there are no defaults existing under the Subordinate Loan Documents, and no event has occurred that, with the giving of notice or the passing of time, or both, would constitute a default under the Subordinate Loan Documents or the Subordinate Loan.

**4. Insurance; Proceeds From Insurance, and Awards from Condemnation.**

**4.1** Subordinate Lender hereby subordinates and assigns to Senior Lender all legal and beneficial interests of Subordinate Lender in and to any and all insurance proceeds and condemnation awards arising from, out of or in any way connected with the Property or the Project or any portion thereof, as more specifically set forth in subsections 4.1.1 and 4.1.2 below; and upon written request from Borrower, Senior Lender, any insurer of the Project or any governmental authority with powers of condemnation over the Project, Subordinate Lender agrees to execute such further written documentation evidencing and confirming said subordination and assignment by Subordinate Lender and the superior and senior interest of Senior Lender in and to any insurance proceeds and/or condemnation or taking awards arising from or out of the Project.

**4.1.1** All of Subordinate Lender's right, title and interest, and any claim of Subordinate Lender, if any, in and to the proceeds of any builder's risk policy or property insurance policy or other insurance coverage (whether property or liability coverage) covering all or any portion of the Project or the Property is hereby subordinated and assigned to Senior Lender for the benefit of the Senior Loan and for application and repayment of the Senior Loan or any indebtedness evidenced or secured by the Senior Loan Documents or for any other disposition thereof, in accordance with the provisions of the Senior Loan Documents, including but not limited to the restoration of the Project or application to and repayment of all or any portion of the Senior Loan. Such proceeds are only to be applied on the Subordinate Loan or paid to the Subordinate Lender upon Repayment in Full of the Senior Loan and total satisfaction of the Senior Indebtedness.

**4.1.2** All of Subordinate Lender's right, title and interest, and any claim of Subordinate Lender, if any, in and to the award or awards of any taking or condemnation arising from or out of the Project or any portion of the Property is hereby subordinated and assigned to Senior Lender for the benefit of the Senior Loan and for application and repayment of the Senior Loan or any indebtedness evidenced or secured by the Senior Loan Documents or for any other disposition thereof, in accordance with the provisions of the Senior Loan Documents, including but not limited to the restoration of the Project or application to and repayment of all or any portion of the Senior Loan. Such awards are only to be applied on the Subordinate Loan or paid to the Subordinate Lender upon Repayment in Full of the Senior Loan and total satisfaction of the Senior Indebtedness.

**4.2** Upon receipt and application by Senior Lender of any insurance proceeds or condemnation awards pursuant to Subsection 4.1 above, if such receipt and application by Senior Lender results in (a) the occurrence of a Repayment in Full of the Senior Loan with no outstanding unpaid principal, interest or other sums or obligations due or owing to Senior Lender

in connection with or under the Senior Loan and Senior Loan Documents and the Senior Loan and Loan Documents are terminated, such that Senior Lender has no further funding or other obligations thereunder, and (b) an excess balance remains in said insurance proceeds or any condemnation award (following the Repayment in Full of the Senior Loan), then, and only then will such excess be made payable to the joint order of Borrower and the Subordinate Lender, as their respective interests may appear, pursuant to the terms of the Subordinate Loan Documents.

4.3 Subordinate Lender agrees at any time and from time to time to execute such additional documents as Senior Lender or any insurer or taking authority may reasonably require to confirm that Subordinate Lender and Subordinate Lender's rights as (a) a loss payee or (b) an additional insured or (c) a lien holder or (d) a party in interest with respect to any insurance proceeds or taking award are for all purposes subject and subordinate and junior to the rights of Senior Lender as a loss payee, or an additional insured, or a lien holder or a party in interest or any or all of the same.

5. **Additional Condemnation and Litigation Provisions.** Until Repayment in Full of the Senior Loan has occurred, Subordinate Lender, on behalf of itself, its successors and assigns in interest, agrees not to exercise any rights in or take any position regarding the Property or the Project or with respect to any taking or condemnation awards or proceedings or litigation involving the Project, or any part thereof, inconsistent with or contrary to the interests of Senior Lender or the Senior Loan Documents or take any legal position contrary or opposed to that taken by Senior Lender in any condemnation proceedings, litigation or pleadings involving the Project and hereby subordinates and assigns to Senior Lender all right, title and interest of Subordinate Lender (both legal and equitable) arising under or out of the Subordinate Loan Documents and the Property, or the Project and/or any taking awards; and upon written request Subordinate Lender agrees to execute such further written documentation evidencing and confirming said subordination and assignment to Senior Lender.

6. **Standstill by Subordinate Lender/Notice from Senior Lender; Sale of Senior Loan.**

6.1 Until Repayment in Full of the Senior Loan and release of the Senior Loan Documents, Subordinate Lender hereby waives all rights to exercise and shall not exercise any of its rights or remedies with respect to the Subordinate Loan or the Subordinate Loan Documents (whether relating to a default in payment and/or performance or any other default and/or an event of default under the Subordinate Loan Documents or otherwise) or the exercise of any remedy in connection with the Subordinate Loan Documents or any Subordinate Security Instruments (including, without limitation, the appointment of a receiver or the commencement of foreclosure proceedings) without the prior written consent of Senior Lender, which consent shall be given or withheld in Senior Lender's absolute and sole discretion. Any exercise of any right or remedy in connection with the Subordinate Loan Documents by Subordinate Lender without such consent from Senior Lender shall be void *ab initio* and of no force or effect whatsoever.

6.2 Senior Lender agrees that (a) after an event of default under the Senior Loan Documents if it has not previously sold the Senior Loan Documents, (b) upon actual receipt of written notice from Subordinate Lender as provided in this subsection referencing this subsection and (c) upon delivery by Subordinate Lender to Senior Lender of an amount equal to all principal, interest, fees, costs, expenses and any other amount due Senior Lender under the Senior Loan and the Senior Loan Documents, Senior Lender will sell and assign to Subordinate Lender the Senior Loan, the related promissory note, the Senior Security Instrument, and all other Senior Loan Documents or collateral received by Senior Lender in connection with the Senior Loan. When possible, Senior Lender will use reasonable efforts to give written notice to Subordinate Lender (the "*Foreclosure Notice*") prior to commencing a foreclosure action with respect to the Project ("*Foreclosure*"); but failure to give such Foreclosure Notice shall not invalidate the Foreclosure or any proceedings commenced thereunder. If Subordinate Lender desires to purchase the Senior Loan, Subordinate Lender shall, within five (5) banking days after receipt of the Foreclosure Notice from Senior Lender, provide notice to Senior Lender (in accordance with the terms of Section 12 below) of Subordinate Lender's intent to purchase the Senior Loan (the "*Purchase Notice*"). Subordinate Lender shall have a period of ten (10) banking days after delivery of the Purchase Notice to Senior Lender within which to consummate the purchase of the Senior Loan and to pay all sums due Senior Lender under the Senior Loan Documents. Such sale and assignment by Senior Lender shall be without representations or warranty of any kind, except that Senior Lender will represent and warrant that it holds valid title to the Senior Loan and the Senior Loan Documents, has not previously conveyed any interest in the Senior Loan and has the authority to sell the Senior Loan and Senior Loan Documents. In addition, the sale shall be on terms and conditions acceptable to Senior Lender and pursuant to documents acceptable to Senior Lender, and without any representations or warranties by or recourse to Senior Lender, except as noted above. Borrower hereby consents to the sale of the Senior Loan to Subordinate Lender and agrees to execute all documents required by Senior Lender or Subordinate Lender in connection therewith and hereby authorizes Senior Lender to disclose to Subordinate Lender such information as Senior Lender determines is necessary in connection with such sale, including, without limitation, financial or other proprietary information. Notwithstanding anything herein or in the Senior Loan Documents to the contrary, Borrower hereby agrees to waive any and all claims against Senior Lender under the Senior Loan Documents and agrees to indemnify and hold Senior Lender harmless for and from any and all costs and expenses arising from such sale or assignment of the Senior Loan and the Senior Loan Documents. Notwithstanding anything to the contrary herein contained, nothing herein shall be construed to prohibit Senior Lender from either commencing a foreclosure or to exercise any power of sale for the Property or the Project or having a receiver appointed at anytime for the Property or the Project or any portion thereof.

## 7. Notice and Cure Rights

7.1 Upon the occurrence of a default under the Senior Loan, and prior to the commencement of foreclosure or the exercise of any power of sale by Senior Lender under the Senior Security Instruments, Senior Lender agrees to use reasonable efforts to provide written notice of such default to Subordinate Lender. Subordinate Lender shall have the right (1) within



five (5) days from receipt by Subordinate Lender of any notice of a payment default under the Senior Loan (a default that can be cured with the payment of money) or (2) ten (10) days from receipt of any notice of a non-payment default, to cure such default to the satisfaction of Senior Lender; provided, however, that notice to Subordinate Lender may, at Senior Lender's option, be provided to Subordinate Lender at the same time that notice of default is provided to Borrower, and in such event Subordinate Lender's cure period shall be co-terminus with (and not in addition to) the cure period provided to Borrower under the Senior Loan Documents and will terminate on the same date and time as the end of the cure period for Borrower.

7.2 Upon the occurrence of a default under the Subordinate Loan, Subordinate Lender agrees to provide to Senior Lender a copy of any notice of default provided to Borrower. Subject to Section 6.1 and 6.2 above, Subordinate Lender has agreed not to exercise any remedies under the Subordinate Loan Documents until the payment in full of the Senior Loan.

8. **Event of Default.** Any breach of the covenants or obligations of Borrowers or Subordinate Lender under this Agreement shall constitute an Event of Default under the Senior Loan Documents. Moreover, any default under the Subordinate Loan Documents shall constitute an Event of Default under the Senior Loan Documents and permit Senior Lender to exercise any and all remedies under the Senior Loan Documents. Similarly, any Event of Default under the Senior Loan Documents shall constitute an event of default under the Subordinate Loan Documents.

9. **Further Assurance.** So long as the Senior Loan Documents shall remain a lien upon the Property, the Project or any part thereof, Subordinate Lender or any other holder of the Subordinate Loan Documents, shall execute, acknowledge and deliver, promptly after being requested to do so, any and all further instruments in recordable form reasonably requested by Borrower, Senior Lender or another holder of the Subordinate Loan Documents or the Senior Loan Documents for the purpose of confirming and carrying out the purpose and intent of the foregoing covenants and this Agreement.

10. **Modification of Senior Loan.** No renewal or extension of time of payment of the Senior Loan, no release or surrender of security for the payment of the Senior Loan, no delay in the enforcement of payment of the Senior Loan or in the enforcement of the Senior Loan or this Agreement, and no delay or omission in exercising any right or power under the Senior Loan Documents or any other document or agreement governing, evidencing or securing the Senior Loan, or under this Agreement, shall in any manner impair or adversely affect the rights of Senior Lender under this Agreement. Except as already set forth in this Agreement, Subordinate Lender hereby waives any notice of the creation, existence, extension or renewal of the Senior Loan or of any modification of the Senior Loan or the Senior Loan Documents or of any other actions or matters of any nature whatsoever in connection with the Senior Loan or the Senior Loan Documents.

11. **Consent and Waiver of Subordinate Lender and Guarantors.** Subordinate Lender and the Guarantors, if any, each consents to and approves all provisions of the Senior

Loan Documents, including, but not limited to, all provisions relating to the disbursement of the proceeds of the Senior Loan. Senior Lender, in making disbursements pursuant to the Senior Loan Documents, is under no obligation or duty to, nor has Senior Lender in any manner represented that it will see to the application of the Senior Loan proceeds by the person or persons to whom Senior Lender disburses such loan proceeds; and any application or use of such proceeds for purposes by Borrower other than those provided for in the Senior Loan Documents or this Agreement shall **not defeat or effect** the Subordination herein made in whole or part. This Agreement and the Subordination given herein shall be effective and shall not be impaired nor invalidated in any respect by any release by Senior Lender of any collateral or property securing the Senior Loan or obligations under or given in connection with the Senior Loan or the release of any Guarantor under or guaranty given in connection with the Senior loan.

**12. Notices.** Any notices from Senior Lender to Borrower, or Borrower to Senior Lender, shall be given in the manner set forth in the Senior Loan Documents (for notices to or from Borrower). Any notice from Subordinate Lender to Senior Lender, or Senior Lender to Subordinated Lender, shall be in writing, shall be given by certified mail, returned receipt requested, with postage prepaid or by a nationally recognized overnight delivery service such as FedEx, with all delivery costs prepaid, or delivered by hand, addressed as follows:

**12.1 If to Subordinate Lender :**  
Dynamic Lending, LLC  
8703 South Sandy Parkway  
Sandy, Utah 84070  
Attn: Heber Sheffield

**12.2 If to Senior Lender:**  
Zions First National Bank  
Real Estate Banking Group  
One South Main Street, Suite 470  
Salt Lake City, Utah 84133  
Attention: Ryan Speirs

**12.3 If to Borrower:**  
Silver Pines Condominiums 2 LLC  
8703 Sandy Parkway  
Sandy, Utah 84070  
Attn: Harold B. Irving

Any party may change its address for the giving of notice by providing notice in the manner specified under this Agreement. Any notice given hereunder if given by certified mail will be deemed received when delivered, or if delivery is refused, when delivery is first attempted in the ordinary course. Any notice sent by hand delivery shall be deemed received when actually received. Any notice sent by a nationally recognized overnight courier service shall be deemed received one (1) business day after having been deposited with such overnight courier service if designated for next-day delivery. Overnight courier service to be effective must be sent using tracking service and time and date of delivery. If delivery is refused from the overnight courier, delivery is deemed to occur when delivery is first attempted in the ordinary course of business.

**13. Waivers.** Subordinate Lender and Borrower each waives (1) the benefit of suretyship claims and such defenses generally, (ii) any right to require marshaling of assets by Senior Lender or to require Senior Lender to proceed against any Guarantors for the Senior Loan or to exhaust any specific security for the obligations evidenced or secured by the Senior Loan Documents, and (iii) any defense to the exercise of any of Senior Lender's rights hereunder or under the Senior Loan Documents arising out of or connected with any loss or impairment of any rights of Borrower or Subordinate Lender from the subrogation of the Subordinate Loan to the Senior Loan and to the Senior Loan Documents pursuant to this Agreement.

**14. No Consent to Additional Subordinate Financing.** Senior Lender's consent to the Subordinate Loan pursuant to this Agreement is solely for the benefit of Subordinate Lender and Borrower in connection with the funding of the Senior Loan and is limited to the Subordinate Loan. It is not intended to constitute consent to any other matter or lien at the Project nor as a waiver of any rights that Senior Lender, Subordinate Lender or Borrower may have, except as otherwise set forth, waived or limited in this Agreement.

**15. Conflicts.** In the event of any conflict among the Subordinate Loan Documents and this Agreement or the Senior Loan Documents and this Agreement, this Agreement shall control with respect to (a) the priority and obligations of the Senior Lender and the Senior Loan Documents to the Subordinate Lender and the Subordinate Loan Documents and (b) the priority and obligations of the Subordinate Lender and the Subordinate Loan Documents to the Senior Lender and the Senior Loan Documents.

**16. Miscellaneous.**

**16.1** This Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their successors and assigns.

**16.2** This Agreement shall be construed and enforced in accordance with the laws of the state of Utah, without regard to the state's choice of law rules where the Project is located.

16.3 This Agreement may be signed in any number of counterparts, all of which will constitute an original, and all of which when taken together shall constitute one instrument.

16.4 This Agreement is for the sole and exclusive benefit of the parties hereto and may not be relied upon or enforced for the benefit of any third party nor the creditors of the parties hereto, nor the material providers, contractors, subcontractors nor vendors of the Project. With respect to the funding of the Senior Loan, Senior Lender shall only be obligated to Borrower pursuant to and under the terms and conditions of the Senior Loan Documents and not otherwise.

17. **Lender Discretion.** Nothing in this Agreement shall be constructed as requiring Senior Lender to grant any financial assistance to the Borrower or to fund the Senior Loan or as limiting or precluding Senior Lender from the exercise of Senior Lender's independent judgment and discretion in connection with Senior Lender's financial arrangements with Borrower and rights under the Senior Loan Documents; and the Senior Loan Documents shall control all of Senior Lender's obligations in connection with the funding of the Senior Loan.

18. **WAIVER OF JURY TRIAL AND CLASS ACTION WAIVER.** THE PARTIES HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM, WHETHER IN CONTRACT, TORT, OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, OR TO ANY ACTS OR OMMISIONS OF LENDER IN CONNECTION THEREWITH OR ANY DISPUTE (as "Dispute" is hereinafter defined), and Disputes shall be resolved by a judge sitting without a jury. If a court determines that this provision is not enforceable for any reason and at any time prior to trial of the Dispute, but not later than 30 days after entry of the order determining this provision is unenforceable, any party shall be entitled to move the court for an order compelling arbitration and staying or dismissing such litigation pending arbitration ("Arbitration Order"). If permitted by applicable law, each party also waives the right to litigate in court or an arbitration proceeding any Dispute as a class action, either as a member of a class or as a representative, or to act as a private attorney general.

19. **ARBITRATION.** If a claim, dispute, or controversy arises between us with respect to this Agreement, related agreements, or any other agreement or business relationship between any of us whether or not related to the subject matter of this Agreement (all of the foregoing, a "Dispute"), and only if a jury trial waiver is not permitted by applicable law or ruling by a court, any of us may require that the Dispute be resolved by binding arbitration before a single arbitrator at the request of any party. By agreeing to arbitrate a Dispute, each party gives up any right that party may have to a jury trial, as well as other rights that party would have in court that are not available or are more limited in arbitration, such as the rights to discovery and to appeal.

Arbitration shall be commenced by filing a petition with, and in accordance with the applicable arbitration rules of, JAMS or National Arbitration Forum ("Administrator") as selected by the initiating party. If the parties agree, arbitration may be commenced by appointment of a licensed attorney who is selected by the parties and who agrees to conduct the arbitration without an Administrator. Disputes include matters (i) relating to a deposit account, application for or denial of credit, enforcement of any of the obligations we have to each other, compliance with applicable laws and/or regulations, performance or services provided under any agreement by any party, (ii) based on or arising from an alleged tort, or (iii) involving either of our employees, agents, affiliates, or assigns of a party. **However, Disputes do not include** the validity, enforceability, meaning, or scope of this arbitration provision and such matters may be determined only by a court. **If a third party is a party to a Dispute, we each will consent to including the third party in the arbitration proceeding for resolving the Dispute with the third party.** Venue for the arbitration proceeding shall be at a location determined by mutual agreement of the parties or, if no agreement, in the city and state where lender or bank is headquartered.

After entry of an Arbitration Order, the non-moving party shall commence arbitration. The moving party shall, at its discretion, also be entitled to commence arbitration but is under no obligation to do so, and the moving party shall not in any way be adversely prejudiced by electing not to commence arbitration. The arbitrator: (i) will hear and rule on appropriate dispositive motions for judgment on the pleadings, for failure to state a claim, or for full or partial summary judgment; (ii) will render a decision and any award applying applicable law; (iii) will give effect to any limitations period in determining any Dispute or defense; (iv) shall enforce the doctrines of compulsory counterclaim, res judicata, and collateral estoppel, if applicable; (v) with regard to motions and the arbitration hearing, shall apply rules of evidence governing civil cases; and (vi) will apply the law of the state specified in the agreement giving rise to the Dispute. Filing of a petition for arbitration shall not prevent any party from (i) seeking and obtaining from a court of competent jurisdiction (notwithstanding ongoing arbitration) provisional or ancillary remedies including but not limited to injunctive relief, property preservation orders, foreclosure, eviction, attachment, replevin, garnishment, and/or the appointment of a receiver, (ii) pursuing non-judicial foreclosure, or (iii) availing itself of any self-help remedies such as setoff and repossession. The exercise of such rights shall not constitute a waiver of the right to submit any Dispute to arbitration.

Judgment upon an arbitration award may be entered in any court having jurisdiction except that, if the arbitration award exceeds \$4,000,000, any party shall be entitled to a de novo appeal of the award before a panel of three arbitrators. To allow for such appeal, if the award (including Administrator, arbitrator, and attorney's fees and costs) exceeds \$4,000,000, the arbitrator will issue a written, reasoned decision supporting the award, including a statement of authority and its

application to the Dispute. A request for de novo appeal must be filed with the arbitrator within 30 days following the date of the arbitration award; if such a request is not made within that time period, the arbitration decision shall become final and binding. On appeal, the arbitrators shall review the award de novo, meaning that they shall reach their own findings of fact and conclusions of law rather than deferring in any manner to the original arbitrator. Appeal of an arbitration award shall be pursuant to the rules of the Administrator or, if the Administrator has no such rules, then the JAMS arbitration appellate rules shall apply.

Arbitration under this provision concerns a transaction involving interstate commerce and shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* This arbitration provision shall survive any termination, amendment, or expiration of this Agreement. If the terms of this provision vary from the Administrator's rules, this arbitration provision shall control.

20. **RELIANCE.** With respect to Section 19 and Section 20 above, each party to this Agreement (i) certifies that no one has represented to such party that any other party would not seek to enforce jury and class action waivers in the event of suit, and (ii) acknowledges that it and the other parties have been induced to enter into this Agreement by, among other things, the mutual waivers, agreements, and certifications in each of Sections 19 and 20 above.

**NOTE:**

**ORAL AGREEMENTS, PROMISES OR COMMITMENTS TO: (1) LOAN MONEY, (2) EXTEND CREDIT, (3) MODIFY OR AMEND ANY TERMS OF ANY COMMITMENT OR THE LOAN DOCUMENTS, (4) RELEASE ANY GUARANTOR, OR (5) FORBEAR FROM ENFORCING REPAYMENT OF ANY LOAN OR THE EXERCISE OF ANY REMEDY UNDER THE LOAN DOCUMENTS, OR (6) MAKE ANY OTHER FINANCIAL ACCOMMODATION RELATING TO AN LOAN ARE NOT ENFORCEABLE.**

**NOTE:**


**THIS SUBORDINATION AGREEMENT CONTAINS A PROVISION WHICH ALLOWS THE BORROWER OBLIGATED ON THE PROPERTY ACTING AS THE SECURITY FOR YOUR LOAN TO OBTAIN A SENIOR LOAN FROM SENIOR LENDER, A PORTION OF WHICH LOAN FUNDS MAY BE EXPENDED FOR OTHER PURPOSES THAN IMPROVEMENTS TO THE PROJECT AND THE BUILDINGS ON THE PROPERTY.**

**[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK. SIGNATURES COMMENCE ON THE NEXT PAGE.]**

**EXECUTED AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.**


**SENIOR LENDER:**

**ZIONS FIRST NATIONAL BANK**  
**a national banking association**

By:   
Ryan J. Speirs, Vice President


**SUBORDINATE LENDER:**

**DYNAMIC LENDING, LLC**

BY:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BORROWER:**

**SILVER PINES CONDOMINIUMS 2 LLC,**  
a Utah limited liability company

By:   
Harold B. Irving, Manager

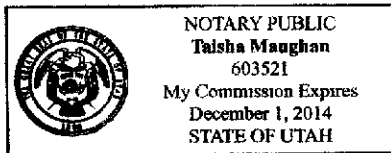
**Notary Blocks and Acknowledgements begin on the next Page.**

**No Guarantors, if any, of the Senior Loan are to execute this Agreement but are to execute the Ratification.**

STATE OF Utah )  
COUNTY OF SL ) ss.

On this 11 day of January, 2013, personally appeared before me Ryan J. Speirs who being by me duly sworn (or affirmed), did say that he is a Vice President of Zions First National Bank, a national banking association, and that said instrument was signed in behalf of said association by authority of an appropriate consent and acknowledged to me that said association executed the same.

SEAL



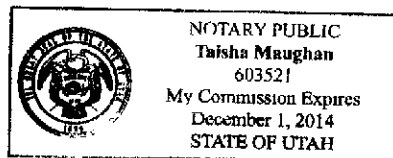
(Signature)  
My commission expires:

Taisha Maughan  
12/1/14

STATE OF Utah )  
COUNTY OF SL ) ss.

On this 11 day of January, 2013, personally appeared before me Harold B Irving, and Heber Sheffield who being by me duly sworn (or affirmed), did say that they are the Managers of Dynamic Lending, LLC, and that said instrument was signed in behalf of said limited liability company by authority of an appropriate resolution and acknowledged to me that said limited liability company executed the same.

SEAL



(Signature)  
My commission expires:

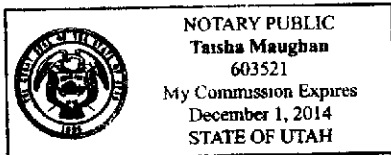
Taisha Maughan  
12/1/14



STATE OF Utah )  
                                  )  
COUNTY OF SL ) ss.

On this 11 day of January, 2013, personally appeared before me Harold B. Irving who being by me duly sworn (or affirmed), did say that he is the Manager of Silver Pines Condominiums 2 LLC, a Utah limited liability company, and that said instrument was signed in behalf of said limited liability company by authority of an appropriate resolution and acknowledged to me that said limited liability company executed the same.

SEAL



(Signature) Taisha Maughan  
My commission expires: 12-1-14

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

The real property located in Uintah County, State of Utah, and more particularly described as follows:

**[SEE ATTACHED]**

**Exhibit "A"**

**Property Description**

PT 05-053 0061 SWNE

PARCEL 1: Proposed Silver Pines Condominiums 2, Phase 2 more particularly described as follows:

Beginning at the Southeast Corner of SILVER PINES 2 PHASE 2, which corner bears South 88 deg 10'40" West 1253.77 feet from the East 1/4 Corner of Section 26, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence South 88 deg 10'40" West 68.30 feet; thence North 02 deg 04'25" West 99.03 feet; thence North 79 deg 23'26" West 86.25 feet; thence South 89 deg 25'39" West 201.05 feet; thence North 56 deg 37'50" West 129.23 feet; thence North 28 deg 22'59" West 74.74 feet; thence North 81 deg 41'17" West 163.14 feet; thence North 60 deg 02'45" West 130.78 feet; thence North 20 deg 23'31" East 144.85 feet; thence North 20 deg 22'55" East 8.50 feet; thence South 69 deg 37'05" East 81.85 feet to the point of tangency with the arc of a 143.00 foot radius curve to the left; thence 169.18 feet along the arc of said curve through a central angle of 67 deg 47'02" (chord bears North 76 deg 29'24" East 159.48 feet); thence North 42 deg 35'53" East 137.62 feet to the point of tangency with the arc of a 143.00 foot radius curve to the left; thence 61.40 feet along the arc of said curve through a central angle of 24 deg 36'06" (chord bears North 30 deg 17'50" East 60.93 feet); thence North 87 deg 57'35" East 194.49 feet; thence South 01 deg 56'06" East 17.83 feet; thence North 88 deg 00'17" East 95.50 feet; thence South 01 deg 59'43" East 30.00 feet; thence North 88 deg 00'17" East 53.32 feet; thence South 02 deg 04'25" East 607.49 feet to the point of beginning.

PT 05-053-0061 SWNE

PARCEL 2: Beginning at a point on the north line of the Southwest Quarter Northeast Quarter of Section 26, Township 4 South, Range 21 East, Salt Lake Base and Meridian, which bears North 87 deg 57'39" East 670.24 feet from the Northwest Corner of the said Southwest Quarter Northeast Quarter; thence North 87 deg 57'39" East 715.23 feet; thence South 01 deg 59'43" East 1325.23 feet; thence South 88 deg 10'40" West 68.30 feet; thence North 01 deg 59'43" West 99.00 feet; thence North 80 deg 11'46" West 85.50 feet; thence South 89 deg 18'14" West 201.30 feet; thence North 56 deg 11'46" West 104.60 feet; thence North 35 deg 07'21" West 45.90 feet; thence North 10 deg 44'15" West 53.22 feet; thence North 79 deg 56'07" West 122.83 feet; thence North 73 deg 00'07" West 17.77 feet; thence North 67 deg 08'26" West 35.21 feet; thence South 81 deg 48'42" West 30.84 feet; thence South 19 deg 32'16" West 19.59 feet; thence North 54 deg 41'46" West 108.19 feet; thence North 20 deg 22'35" East 144.97 feet; thence North 69 deg 37'05" West 65.63 feet; thence 39.92 feet along the arc of a 1145.45 foot radius curve concave to the southwest (chord bears North 70 deg 36'59" West 39.92 feet); thence North 14 deg 42'38" East 152.87 feet; thence North 54 deg 39'12" East 66.73 feet; thence North 35 deg 15'53" East 80.00 feet; thence North 16 deg 43'36" West 92.79 feet; thence South 87 deg 57'39" West 15.00 feet; thence North 02 deg 02'21" West 273.05 feet; thence North 24 deg 16'37" West 47.68 feet; thence North 02 deg 02'21" West 134.31 feet to the point of beginning.

LESS AND EXCEPTING THEREFROM the following described 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.

(Continued)

(Continued)

ALSO LESS AND EXCEPTING THEREFROM the following described land: Beginning at the Southeast Corner of SILVER PINES 2 PHASE 2, which corner bears South 88 deg 10'40" West 1253.77 feet from the East 1/4 Corner of Section 26, Township 4 South, Range 21 East, Salt Lake Base and Meridian; thence South 88 deg 10'40" West 68.30 feet; thence North 02 deg 04'25" West 99.03 feet; thence North 79 deg 23'26" West 86.25 feet; thence South 89 deg 25'39" West 201.05 feet; thence North 56 deg 37'50" West 129.23 feet; thence North 28 deg 22'59" West 74.74 feet; thence North 81 deg 41'17" West 163.14 feet; thence North 60 deg 02'45" West 130.78 feet; thence North 20 deg 23'31" East 144.85 feet; thence North 20 deg 22'55" East 8.50 feet; thence South 69 deg 37'05" East 81.85 feet to the point of tangency with the arc of a 143.00 foot radius curve to the left; thence 169.18 feet along the arc of said curve through a central angle of 67 deg 47'02" (chord bears North 76 deg 29'24" East 159.48 feet); thence North 42 deg 35'53" East 137.62 feet to the point of tangency with the arc of a 143.00 foot radius curve to the left; thence 61.40 feet along the arc of said curve through a central angle of 24 deg 36'06" (chord bears North 30 deg 17'50" East 60.93 feet); thence North 87 deg 57'35" East 194.49 feet; thence South 01 deg 56'06" East 17.83 feet; thence North 88 deg 00'17" East 95.50 feet; thence South 01 deg 59'43" East 30.00 feet; thence North 88 deg 00'17" East 53.32 feet; thence South 02 deg 04'25" East 607.49 feet to the point of beginning.

(05-053-0061)