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MULTIFAMILY MORTGAGE,  
ASSIGNMENT OF LEASES AND RENTS  
SECURITY AGREEMENT AND FIXTURE FILING

INDIANA

THIS MULTIFAMILY MORTGAGE, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING ("Instrument") made to be effective as of the 30<sup>th</sup> day of April, 2014 between HP APARTMENTS, LLC, an Indiana limited liability company, whose address is 320 E. 90<sup>th</sup> Drive, Merrillville, IN 46410, Attention: Nancy Clifford ("Borrower") and FIRST MIDWEST BANK, an Illinois banking corporation, whose address is 10322 Indianapolis Boulevard, Highland, IN 46322, Attention: Jeff Burgoyne ("Lender"). Borrower's employer identification number, is 26-1209398.

RECITAL

Borrower is indebted to Lender in the principal amount of \$6,900,000.00, evidenced by that certain Note ("Note") payable to Lender, dated as of the date of this Instrument and maturing on April 30, 2017 ("Maturity Date"). Pursuant to the Note, Borrower promises to pay said principal sums (or so much thereof as may be outstanding thereon), together with interest on the balance of principal from time to time outstanding and unpaid thereon, at the variable rate and at the times specified in the Note.

Document is  
AGREEMENT  
NOT OFFICIAL!  
This is the property of  
the Lake County Recorder.

TO SECURE TO LENDER the repayment of the indebtedness, and all renewals, extensions and modifications of the indebtedness, and the performance of the covenants and agreements of Borrower contained in the Loan Documents, Borrower mortgages, warrants, grants, conveys and assigns to Lender, its successors and assigns a continuing security interest in all and singular the properties, rights, interests and privileges described in Granting Clauses I, II, III, IV, V, VI, VII and VIII below all of same being collectively referred to herein as the "Mortgaged Property".

GRANTING CLAUSE I

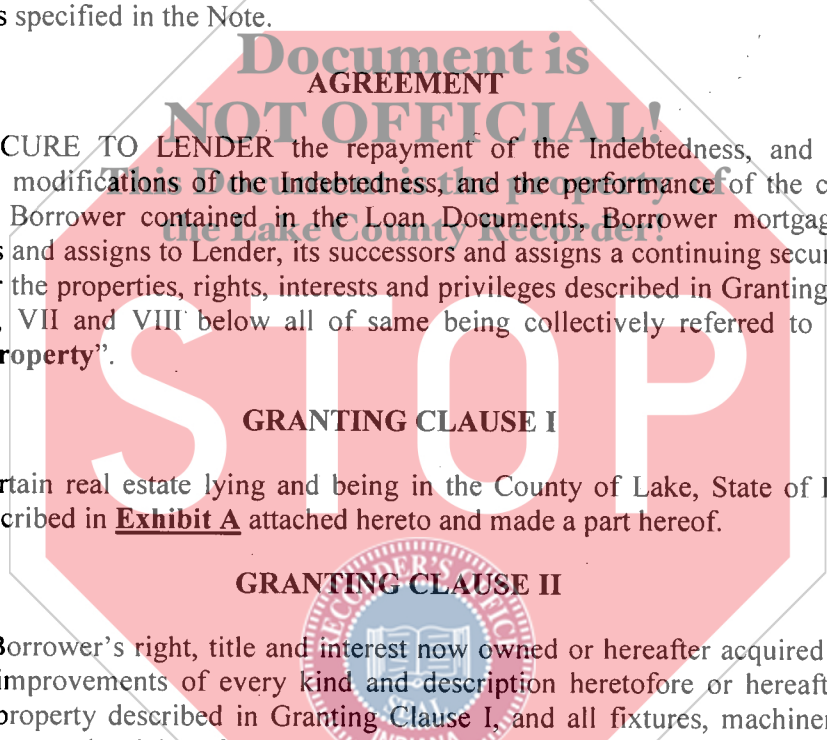
That certain real estate lying and being in the County of Lake, State of Indiana, more particularly described in Exhibit A attached hereto and made a part hereof.

GRANTING CLAUSE II

All of Borrower's right, title and interest now owned or hereafter acquired in and to the buildings and improvements of every kind and description heretofore or hereafter erected or placed on the property described in Granting Clause I, and all fixtures, machinery, apparatus, equipment, fittings and articles of personal property of every kind and nature whatsoever owned by Borrower now or hereafter attached to or contained in or used in connection with said real estate and the buildings and improvements now or hereafter located thereon and the operation, maintenance and protection thereof, including but not limited to, all machinery, motors, fittings, radiators, awnings, shades, screens, all gas, coal, steam, electric, oil and other heating, cooking, power and lighting apparatus and fixtures, all fire prevention and extinguishing equipment and

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STATE OF INDIANA  
LAKE COUNTY  
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RECORDER



14-7671 HOLD FOR MERIDIAN TITLE CORP

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apparatus, all cooling and ventilating apparatus and systems, all plumbing, incinerating, sprinkler equipment and fixtures, all elevators and escalators, all communication and electronic monitoring equipment, all window and structural cleaning rigs and all other machinery and other equipment of every nature and fixtures and appurtenances thereto and all items of furniture, appliances, draperies, carpets, other furnishings, equipment and personal property used or useful in the operation, maintenance and protection of the said real estate and the buildings and improvements now or hereafter located thereon and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to said buildings or improvements in any manner; it being mutually agreed, intended and declared that all the aforesaid property shall, so far as permitted by law, be deemed to form a part and parcel of the real estate and for the purpose of this Mortgage to be real estate and covered by this Mortgage; and as to the balance of the property aforesaid, this Mortgage is hereby deemed to be as well a Security Agreement under the provisions of the Uniform Commercial Code of Indiana for the purpose of creating hereby a security interest in said property, which is hereby granted by Borrower as debtor to Lender as secured party, securing the Indebtedness. The addresses of Borrower (debtor) and Lender (secured party) appear at the beginning hereof.

### GRANTING CLAUSE III

All right, title and interest of Borrower now owned or hereafter acquired in and to all and singular the estates, tenements, hereditaments, privileges, easements, licenses, franchises, appurtenances and royalties, mineral, oil and water rights belonging or in any wise appertaining to the property described in the preceding Granting Clause I and the buildings and improvements now or hereafter located thereon and the reversions, rents, issues, revenues and profits thereof, including all interest of Borrower in all rents, issues and profits of the aforementioned property and all rents, issues, profits, revenues, royalties, bonuses, rights and benefits due, payable or accruing (including all deposits of money as advance rent or for security) under any and all leases and renewals thereof or under any contracts or options for the sale of all or any part of said property (including during any period allowed by law for the redemption of said property after any foreclosure or other sale), together with the right, but not the obligation, to collect, receive and receipt for all such rents and other sums and apply them to the Indebtedness and to demand, sue for and recover the same when due or payable; provided that the assignments made hereby shall not impair or diminish the obligations of Borrower under the provisions of such leases or other agreements nor shall such obligations be imposed upon Lender. By acceptance of this Mortgage, Lender agrees that until an Event of Default (as hereinafter defined) shall occur giving Lender the right to foreclose this Mortgage, Borrower may collect, receive (but not more than 30 days in advance) and enjoy such rents.

### GRANTING CLAUSE IV

All judgments, awards of damages, settlements and other compensation hereafter paid or payable to Borrower resulting from condemnation proceedings or the taking of the property described in Granting Clause I or any part thereof or any building or other improvements now or at any time hereafter located thereon or any easement or other appurtenance thereto under the power of eminent domain, or any similar power or right (including any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for the payment thereof), whether permanent or

temporary, or for any damage (whether caused by such taking or otherwise) to said property or any part thereof or the improvements thereon or any part thereof, or to any rights appurtenant thereto, including severance and consequential damage, and any award for change of grade of streets.

#### GRANTING CLAUSE V

All property and rights, if any, which are by the express provisions of this instrument required to be subjected to the lien hereof and any additional property and rights that may from time to time hereafter by any writing of any kind, be subjected to the lien hereof.

#### GRANTING CLAUSE VI

All rights in and to common areas and access roads on adjacent properties heretofore or hereafter granted to Borrower and any after-acquired title or reversion in and to the beds of any ways, roads, streets, avenues and alleys adjoining the property described in Granting Clause I or any part thereof.

#### GRANTING CLAUSE VII

All of the Borrower's "general intangibles" (as defined in the Uniform Commercial Code) now owned or hereafter acquired relating to the Mortgaged Property, including, without limitation, all right, title and interest of Borrower in and to: (i) all agreements, leases, licenses and contracts to which Borrower is or may become a party relating to the Mortgaged Property or improvements thereon; (ii) all obligations or indebtedness owing to Borrower (other than accounts) or other rights to receive payments of money from whatever source relating to the Mortgaged Property; (iii) all tax refunds and tax refund claims; (iv) all intellectual property; and (v) all choses in action and causes of action.

All of Borrower's "accounts" (as defined in the Uniform Commercial Code) now owned or hereafter created or acquired relating to the Mortgaged Property, including, without limitation, all of the following now owned or hereafter created or acquired by Borrower: (i) accounts receivable, contract rights, book debts, notes, drafts, and other obligations or indebtedness owing to Borrower arising from the sale, lease or exchange of goods or other property and/or the performance of services, (ii) Borrower's rights in, to and under all purchase orders for goods, services or other property, (iii) Borrower's rights to any goods, services or other property represented by any of the foregoing, (iv) monies due to or to become due to Borrower under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services including the right to payment of any interest or finance charges in respect thereto (whether or not yet earned by performance on the part of Borrower), (v) uncertificated securities, and (vi) proceeds of any of the foregoing and all collateral security and guaranties of any kind given by any person or entity with respect to any of the foregoing. All warranties, guarantees, permits and licenses received by Borrower in respect to the Mortgaged Property.

#### GRANTING CLAUSE VIII

All proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or other liquidated claims, including, without limitation, all proceeds of insurance.

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

## COVENANTS

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

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

**"Attorneys' Fees and Costs"** means (a) reasonable fees and out-of-pocket costs of Lender's attorneys, as applicable, including costs of Lender's in-house counsel, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping and similar costs and expenses; (b) costs and fees of expert witnesses, including appraisers; (c) investigatory fees; and (d) the costs for any opinion required by Lender pursuant to the terms of the Loan Documents.

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

**"Event of Default"** means the occurrence of any event described in Section 8.

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

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

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

**"Indebtedness"** means the principal of, interest at the fixed or variable rate set forth in the Note on, and all other amounts due at any time under, the Note, this Instrument or any other Loan Document, including prepayment premiums, late charges, default interest, and advances as provided in Section 7 to protect the security of this Instrument.

**"Land"** means the land described in Exhibit A.

**"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.

**"Loan Agreement"** means that certain Loan Agreement executed by Borrower in favor of Lender and dated as of the date of this Instrument, as such agreement may be amended from time to time.

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

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

**"Notice"** or **"Notices"** means all notices, demands and other communication required under the Loan Documents, provided in accordance with the requirements of Section 13.8 of the Loan Agreement.

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

"Rents" means all rents (whether from residential or non-residential space), revenues and other income of the Land or the Improvements, parking fees, laundry and vending machine income and fees and charges for food, health care and other services provided at the Mortgaged Property, whether now due, past due or to become due, and deposits forfeited by tenants, and, if Borrower is a cooperative housing corporation or association, maintenance fees, charges or assessments payable by shareholders or residents under proprietary leases or occupancy agreements, whether now due, past due, or to become due.

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

**2. Uniform Commercial Code Security Agreement.**

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

- (d) This Instrument also constitutes a financing statement with respect to any part of the Mortgaged Property that is or may become a Fixture, if permitted by applicable law.

**3. Assignment of Rents; Appointment of Receiver; Mortgagee in Possession.**

- (a) As part of the consideration for the Indebtedness, Borrower absolutely and unconditionally assigns and transfers to Lender all Rents.
- (i) It is the intention of Borrower to establish a present, absolute and irrevocable transfer and assignment to Lender of all Rents and to authorize and empower Lender to collect and receive all Rents without the necessity of further action on the part of Borrower.
- (ii) Promptly upon request by Lender, Borrower agrees to execute and deliver such further assignments as Lender may from time to time require. Borrower and Lender intend this assignment of Rents to be immediately effective and to constitute an absolute present assignment and not an assignment for additional security only.
- (iii) For purposes of giving effect to this absolute assignment of Rents, and for no other purpose, Rents will not be deemed to be a part of the Mortgaged Property. However, if this present, absolute and unconditional assignment of Rents is not enforceable by its terms under the laws of the State of Indiana, then the Rents will be included as a part of the Mortgaged Property and it is the intention of Borrower that in this circumstance this Instrument create and perfect a Lien on Rents in favor of Lender, which Lien will be effective as of the date of this Instrument.
- (b) Until the occurrence of an Event of Default, Lender hereby grants to Borrower a revocable license to collect and receive all Rents, to hold all Rents in trust for the benefit of Lender and to apply all Rents to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents and to pay the current costs and expenses of managing, operating and maintaining the Mortgaged Property, including utilities, Taxes and insurance premiums, tenant improvements and other capital expenditures.
- (i) So long as no Event of Default has occurred and is continuing, the Rents remaining after application pursuant to the preceding sentence may be retained by Borrower free and clear of, and released from, Lender's rights with respect to Rents under this Instrument.
- (ii) After the occurrence of an Event of Default, and during the continuance of such Event of Default, Borrower authorizes Lender to collect, sue for and compromise Rents and directs each tenant of the Mortgaged Property to pay all Rents to, or as directed by, Lender. From and after the occurrence of an Event of Default, and during the continuance of such Event of

Default, and without the necessity of Lender entering upon and taking and maintaining control of the Mortgaged Property directly, or by a receiver, Borrower's license to collect Rents will automatically terminate and Lender will without Notice be entitled to all Rents as they become due and payable, including Rents then due and unpaid. Borrower will pay to Lender upon demand all Rents to which Lender is entitled.

- (i) At any time on or after the date of Lender's demand for Rents, Lender may give, and Borrower hereby irrevocably authorizes Lender to give, notice to all tenants of the Mortgaged Property instructing them to pay all Rents to Lender. No tenant will be obligated to inquire further as to the occurrence or continuance of an Event of Default. No tenant will be obligated to pay to Borrower any amounts which are actually paid to Lender in response to such a notice. Any such notice by Lender will be delivered to each tenant personally, by mail or by delivering such demand to each rental unit. Borrower will not interfere with and will cooperate with Lender's collection of such Rents.
  
- (c) Borrower represents and warrants to Lender that it has not executed any prior assignment of Rents (other than an assignment of Rents securing any prior indebtedness that is being assigned to Lender, or paid off and discharged with the proceeds of the Loan evidenced by the Note), that Borrower has not performed any acts and has not executed, and will not execute, any instrument which would prevent Lender from exercising its rights under any Loan Document, and that at the time of execution of this Instrument there has been no prepayment of any Rents for more than 2 months prior to the due dates of such Rents.
  
- (d) If an Event of Default has occurred and is continuing, then Lender will have each of the following rights and may take any of the following actions:
  - (i) Lender may, regardless of the adequacy of Lender's security or the solvency of Borrower and even in the absence of waste, enter upon and take and maintain full control of the Mortgaged Property in order to perform all acts that Lender in its discretion determines to be necessary or desirable for the operation and maintenance of the Mortgaged Property, including the execution, cancellation or modification of Leases, the collection of all Rents, the making of any repairs to the Mortgaged Property and the execution or termination of contracts providing for the management, operation or maintenance of the Mortgaged Property, for the purposes of enforcing the assignment of Rents pursuant to Section 3(a), protecting the Mortgaged Property or the security of this Instrument, or for such other purposes as Lender in its discretion may deem necessary or desirable.
  
  - (ii) Alternatively, if an Event of Default has occurred and is continuing, regardless of the adequacy of Lender's security, without regard to Borrower's solvency and, if permitted by applicable law, without the



necessity of giving prior notice (oral or written) to Borrower, Lender may apply to any court having jurisdiction for the appointment of a receiver for the Mortgaged Property to take any or all of the actions set forth in the preceding sentence. If Lender elects to seek the appointment of a receiver for the Mortgaged Property at any time after an Event of Default has occurred and is continuing, Borrower, by its execution of this Instrument, expressly consents to the appointment of such receiver, including the appointment of a receiver *ex parte* if permitted by applicable law.

- (iii) If Borrower is a housing cooperative corporation or association, Borrower hereby agrees that if a receiver is appointed, the order appointing the receiver may contain a provision requiring the receiver to pay the installments of interest and principal then due and payable under the Note and the other amounts then due and payable under the other Loan Documents, it being acknowledged and agreed that the Indebtedness is an obligation of Borrower and must be paid out of maintenance charges payable by Borrower's tenant shareholders under their proprietary leases or occupancy agreements.
- (iv) Lender or the receiver, as the case may be, will be entitled to receive a reasonable fee for managing the Mortgaged Property.
- (v) Immediately upon appointment of a receiver or immediately upon Lender's entering upon and taking possession and control of the Mortgaged Property, Borrower will surrender possession of the Mortgaged Property to Lender or the receiver, as the case may be, and will deliver to Lender or the receiver, as the case may be, all documents, records (including records on electronic or magnetic media), accounts, surveys, plans, and specifications relating to the Mortgaged Property and all security deposits and prepaid Rents.
- (vi) If Lender takes possession and control of the Mortgaged Property, then Lender may exclude Borrower and its representatives from the Mortgaged Property.

Borrower acknowledges and agrees that the exercise by Lender of any of the rights conferred under this Section 3 will not be construed to make Lender a mortgagee-in-possession of the Mortgaged Property so long as Lender has not itself entered into actual possession of the Land and Improvements.

- (e) If Lender enters the Mortgaged Property, Lender will be liable to account only to Borrower and only for those Rents actually received. Except to the extent of Lender's willful misconduct, Lender will not be liable to Borrower, anyone claiming under or through Borrower or anyone having an interest in the Mortgaged Property, by reason of any act or omission of Lender under Section 3(d), and Borrower hereby releases and discharges Lender from any such liability to the fullest extent permitted by law.

- (f) If the Rents are not sufficient to meet the costs of taking control of and managing the Mortgaged Property and collecting the Rents, any funds expended by Lender for such purposes will become an additional part of the Indebtedness as provided in Section 7.
- (g) Any entering upon and taking of control of the Mortgaged Property by Lender or the receiver, as the case may be, and any application of Rents as provided in this Instrument will not cure or waive any Event of Default or invalidate any other right or remedy of Lender under applicable law or provided for in this Instrument.

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

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

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

5. **Prepayment Premium.** Borrower will be required to pay a prepayment premium in connection with certain prepayments of the Indebtedness, including a payment made after

Lender's exercise of any right of acceleration of the Indebtedness, as provided in the Loan Agreement.

6. **Application of Payments.** No amount repaid on the Note may be re-borrowed. All payments shall be paid in full without setoff or counterclaim and without reduction for and free from any and all taxes, levies, imposts, duties, fees, charges, deductions, withholdings, restrictions or conditions of any nature imposed by any government or any political subdivision or taxing authority thereof. Prior to the occurrence of an Event of Default, all payments and prepayments received hereunder or under the Loan Documents shall be applied as follows: (i) first, to accrued and unpaid interest on the principal balance of the Note, (ii) second, to the payment of principal due in the month in which the payment or prepayment is made, (iii) third, to fees, expenses, costs and other similar amounts due and payable to Bank, including, without limit, late charges due hereunder, (iv) fourth, to any escrows, impounds or other amounts which may then be due and payable under the Loan Documents, (v) fifth, to any other amounts then due to the Bank hereunder or under any of the Loan Documents, and (vi) last, to the unpaid principal balance of the Note in the inverse order of maturity. After the occurrence of an Event of Default, Lender may apply any payments to the Indebtedness in any such manner as Lender may elect in its sole discretion. Neither Lender's acceptance of an amount that is less than all amounts then due and payable nor Lender's application of such payment in the manner authorized will constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such amount to the Indebtedness, Borrower's obligations under this Instrument, the Note and all other Loan Documents will remain unchanged.

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

- (a) If Borrower fails to perform any of its obligations under this Instrument or any other Loan Document, or if any action or proceeding is commenced which purports to affect the Mortgaged Property, Lender's security or Lender's rights under this Instrument, including eminent domain, insolvency, code enforcement, civil or criminal forfeiture, enforcement of Hazardous Materials Laws, fraudulent conveyance or reorganizations or proceedings involving a bankrupt or decedent, then Lender at Lender's option may make such appearances, file such documents, disburse such sums and take such actions as Lender reasonably deems necessary to perform such obligations of Borrower and to protect Lender's interest, including all of the following:
- (i) Lender may pay Attorneys' Fees and Costs.
  - (ii) Lender may pay fees and out-of-pocket expenses of accountants, inspectors and consultants.
  - (iii) Lender may enter upon the Mortgaged Property to make any repairs to or to secure the Mortgaged Property.

- (iv) Lender may procure any insurance which Borrower is required to carry pursuant to the Loan Agreement.
  - (v) Lender may pay any amounts which Borrower has failed to pay under the Loan Agreement.
  - (vi) Lender may perform any of Borrower's obligations under the Loan Agreement.
  - (vii) Lender may make advances to pay, satisfy or discharge any obligation of Borrower for the payment of money that is secured by an prior lien on all or any part of the Mortgaged Property.
- (b) Any amounts disbursed by Lender under this Section 7, or under any other provision of this Instrument that treats such disbursement as being made under this Section 7, will be secured by this Instrument, will be added to, and become part of, the principal component of the Indebtedness, will be immediately due and payable and will bear interest from the date of disbursement until paid at the Default Rate.
- (c) Nothing in this Section 7 will require Lender to incur any expense or take any action.
8. **Events of Default.** An Event of Default under the Loan Agreement will constitute an Event of Default under this Instrument.
9. **Remedies Cumulative.** Each right and remedy provided in this Instrument is distinct from all other rights or remedies under this Instrument, the Loan Agreement or any other Loan Document or afforded by applicable law or equity, and each will be cumulative and may be exercised concurrently, independently or successively, in any order. Lender's exercise of any particular right or remedy will not in any way prevent Lender from exercising any other right or remedy available to Lender. Lender may exercise any such remedies from time to time and as often as Lender chooses.
10. **Waiver of Statute of Limitations, Offsets, and Counterclaims.** Borrower waives the right to assert any statute of limitations as a bar to the enforcement of the Lien of this Instrument or to any action brought to enforce any Loan Document. Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by Lender or otherwise to offset any obligations to make the payments required by the Loan Documents. No failure by Lender to perform any of its obligations under this Instrument will be a valid defense to, or result in any offset against, any payments that Borrower is obligated to make under any of the Loan Documents.
11. **Waiver of Marshalling.**
- (a) Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender will have the right to

determine the order in which any or all of the Mortgaged Property will be subjected to the remedies provided in this Instrument, the Note, the Loan Agreement or any other Loan Document or applicable law. Lender will have the right to determine the order in which any or all portions of the Indebtedness are satisfied from the proceeds realized upon the exercise of such remedies.

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

12. **Subrogation.** Borrower acknowledges and agrees that Lender shall be subrogated to any lien discharged out of the proceeds of the loan evidenced by the Note or out of any advance by Lender hereunder or under the Note, irrespective of whether or not any such lien may have been released of record.

13. **Maximum Indebtedness.** The lien of this Instrument shall be valid as to all Indebtedness, including future advances, from the time of its filing for record in the recorder's office in the county in which the Mortgaged Property are located. The total amount of Indebtedness may increase or decrease from time to time, but the total unpaid balance of Indebtedness (including disbursements which Lender may make under this Instrument, the Loan Documents or any other documents related thereto) at any one time outstanding shall not exceed a maximum principal amount of Twenty Million Seven Hundred Thousand and 00/100 Dollars (\$20,700,000.00) plus interest thereon, all fees, costs and expenses payable thereunder, and all disbursements made for payment of taxes, special assessments or insurance on the Mortgaged Property and interest on such disbursements (all such indebtedness being hereinafter referred to as the "**maximum amount secured hereby**"). This Instrument shall be valid and have priority over all subsequent liens and encumbrances, including statutory liens, excepting solely taxes and assessments levied on the Mortgaged Property, to the extent of the maximum amount secured hereby.

14. **Further Assurances; Lender's Expenses.**

- (a) Borrower will deliver, at its sole cost and expense, all further acts, deeds, conveyances, assignments, estoppel certificates, financing statements or amendments, transfers and assurances as Lender may require from time to time in order to better assure, grant and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Instrument and the Loan Documents or in connection with Lender's consent rights under the Loan Agreement.
- (b) Borrower acknowledges and agrees that, in connection with each request by Borrower under this Instrument or any Loan Document, Borrower will pay all

reasonable Attorneys' Fees and Costs and expenses incurred by Lender, including any fees payable in accordance with any request for further assurances or an estoppel certificate pursuant to the Loan Agreement, regardless of whether the matter is approved, denied or withdrawn. Any amounts payable by Borrower under this Instrument or under any other Loan Document will be deemed a part of the Indebtedness, will be secured by this Instrument and will bear interest at the Default Rate if not fully paid within 10 days of written demand for payment.

15. **Governing Law; Consent to Jurisdiction and Venue.** This Instrument and the rights and duties of the parties hereto shall be governed by, and construed in accordance with, the internal laws of the State of Indiana without regard to principles of conflicts of laws. Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of Indiana and of any Indiana State court sitting in the County of Lake for purposes of all legal proceedings arising out of or relating to this Instrument or the transactions contemplated hereby. Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
16. **Notice.** All Notices, demands and other communications under or concerning this Instrument will be governed by the terms set forth in the Loan Agreement.
17. **Successors and Assigns Bound.** This Instrument will bind the respective successors and assigns of Borrower and Lender, and the rights granted by this Instrument will inure to Lender's successors and assigns.
18. **Joint and Several Liability.** If more than one Person signs this Instrument as Borrower, the obligations of such Persons will be joint and several.
19. **Relationship of Parties; No Third Party Beneficiary.**
  - (a) The relationship between Lender and Borrower will be solely that of creditor and debtor, respectively, and nothing contained in this Instrument will create any other relationship between Lender and Borrower. Nothing contained in this Instrument will constitute Lender as a joint venturer, partner or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations or contracts of Borrower.
  - (b) No creditor of any party to this Instrument and no other Person will be a third party beneficiary of this Instrument or any other Loan Document.
20. **Severability; Amendments.**
  - (a) The invalidity or unenforceability of any provision of this Instrument will not affect the validity or enforceability of any other provision, and all other provisions will remain in full force and effect. This Instrument contains the entire agreement among the parties as to the rights granted and the obligations assumed in this Instrument.

- (b) No amendment, modification, termination or waiver of any provision of this Instrument or of any other Loan Document, nor consent to any departure by any Borrower or Lender therefrom, shall in any event be effective unless the same shall be in writing and signed by the party against whom enforcement is sought.

**21. Construction.**

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

**22. Acceleration; Remedies.** At any time during the existence of an Event of Default, Lender, at Lender's option, may declare the Indebtedness to be immediately due and payable without further demand, and may institute an action of mortgage foreclosure pursuant to applicable law and proceed to final judgment and execution thereon for the amount of the Indebtedness (as of the date of such judgment) and may invoke any other remedies permitted by applicable law or provided in this Instrument or in any other Loan Document. Lender will be entitled to collect all costs and expenses incurred in pursuing such remedies, including Attorneys' Fees and Costs, costs of documentary evidence, abstracts and title reports and all other expenses described in the Section of the Note titled "Costs and Expenses". If Lender is the purchaser at the foreclosure sale of the Mortgaged Property, the foreclosure sale price (Lender's final bid) will be applied against the Indebtedness.

**23. Preparation And Filing Of Financing Statements.** Borrower irrevocably authorizes Lender at any time and from time to time to prepare and file, on Borrower's behalf, all



financing statements, amendments thereto and continuation statements under the Uniform Commercial Code necessary or appropriate to establish or maintain the validity, perfection and priority of Lender's security, interest in UCC Collateral. Such financing statements, amendments and continuation statements may be unsigned or, if required to be signed by the applicable office with which Lender intends to file such financing statement, signed only by a representative of Lender.

24. **Release.** Upon payment of the Indebtedness, Lender will release this Instrument and any UCC financing statements filed in connection herewith. Borrower will pay Lender's reasonable costs incurred in releasing this Instrument.
25. **Waiver Of Valuation And Appraisement.** Borrower waives all right of valuation and appraisement.
26. **Indiana Responsible Property Transfer Law.** Borrower is not required to furnish to Lender as a result of the transactions evidenced by the Security Instrument a "disclosure document" described in and provided for in the Responsible Property Transfer Law set forth in IC 13-25-3-1, et seq. because the Mortgaged Property does not constitute "property" within the meaning of the Indiana Responsible Property Transfer Law, IC 13-11-2-174.
27. **Waiver Of Trial By Jury.**
  - (a) BORROWER AND LENDER EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY IN ANY LEGAL PROCEEDING WITH RESPECT TO ANY ISSUE THAT IS TRIABLE OF RIGHT BY A JURY ARISING OUT OF (1) THIS INSTRUMENT, (2) THE TRANSACTIONS CONTEMPLATED HEREBY, OR (3) THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER
  - (b) BORROWER AND LENDER EACH WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

**BORROWER:**

HP APARTMENTS, LLC,  
an Indiana limited liability company

By: HAMPSHIRE REAL ESTATE CORPORATION,  
an Indiana corporation

Its: Managing Member

By:   
Name: Jonathan E. Hicks  
Title: President



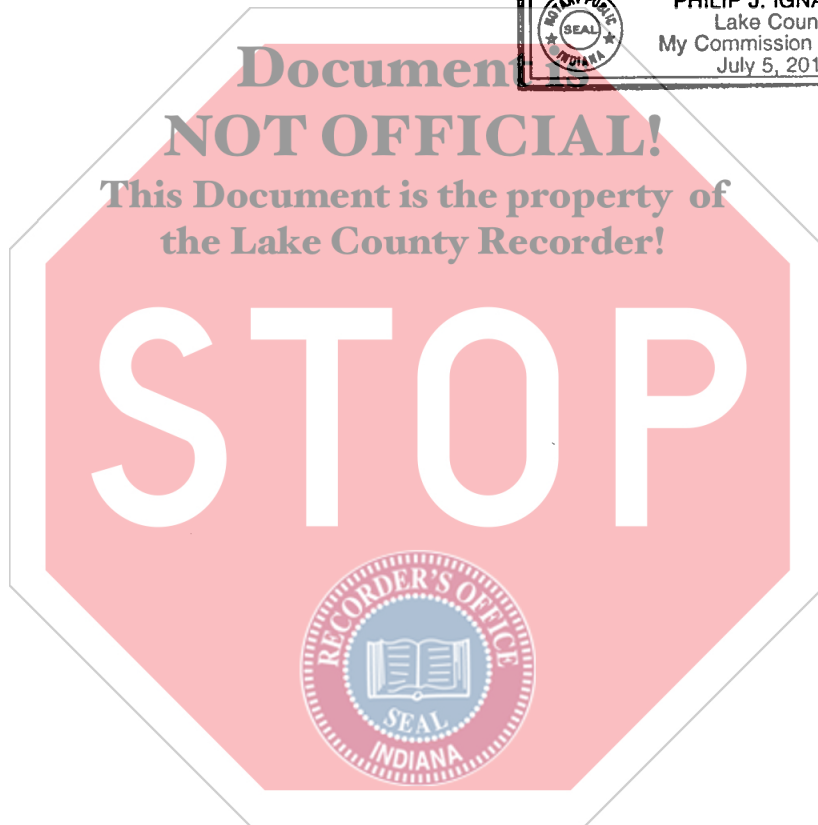
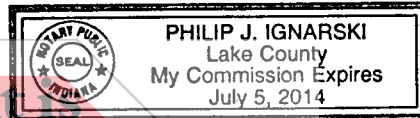
STATE OF INDIANA )  
 ) ss  
COUNTY OF LAKE )

On this 30<sup>th</sup> day of APRIL, 2014, before me, the undersigned, a Notary Public in and for said County, personally appeared HP APARTMENTS, LLC, an Indiana limited liability company by JONATHAN E. HICKS, and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal.

My Commission expires:

  
NOTARY PUBLIC



**EXHIBIT A**

**DESCRIPTION OF THE LAND**

ALL OF LOTS 1, 2, AND 3; AND THE WEST 206 FEET OF LOT 4 IN RIFENBURG'S ADDITION TO HOBART, INDIANA, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 1 PAGE 5, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA,

AND ALSO A PART OF THE NORTHEAST 1/4 AND THE SOUTHEAST 1/4 OF SECTION 30, TOWNSHIP 36 NORTH, RANGE 7 WEST OF THE 2ND PRINCIPAL MERIDIAN, LAKE COUNTY, INDIANA, DESCRIBED IN ONE PARCEL AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF THE NORTHEAST 1/4 OF SAID SECTION 30; THENCE NORTH ALONG THE EAST LINE OF SAID SECTION, A DISTANCE OF 125 FEET; THENCE NORTH 88°05'00" WEST AND PARALLEL TO THE EAST-WEST CENTERLINE OF SAID SECTION 30, A DISTANCE OF 752.50 FEET; THENCE SOUTH 00°00'00" WEST, PARALLEL TO THE EAST LINE OF SAID SECTION 30, A DISTANCE OF 767.8 FEET; THENCE SOUTH 88°05'00" EAST, A DISTANCE OF 200.00 FEET TO THE WEST LINE OF RIFENBURG'S ADDITION; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 48.00 FEET TO THE SOUTHWEST CORNER OF LOT 4, RIFENBURG'S ADDITION; THENCE SOUTH 88°05'00" EAST ALONG THE SOUTH LINE OF SAID LOT 4, A DISTANCE OF 206.00 FEET; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 132 FEET TO THE SOUTH LINE OF LOT 3, RIFENBURG'S ADDITION; THENCE SOUTH 88°05'00" EAST, A DISTANCE OF 316.5 FEET TO THE SOUTHEAST CORNER OF SAID LOT 3; THENCE NORTH 00°00'00" EAST ALONG THE EAST LINE OF RIFENBURG'S ADDITION, A DISTANCE OF 396.0 FEET TO THE NORTHEAST CORNER OF LOT 1, RIFENBURG'S ADDITION; THENCE SOUTH 88°05'00" EAST, A DISTANCE OF 30.00 FEET TO THE EAST LINE OF THE SOUTHEAST 1/4 OF SAID SECTION 30; THENCE NORTH 00°00'00" EAST, A DISTANCE OF 66.8 FEET TO THE POINT OF BEGINNING.

ADDRESS: 400 NORTH LAKE PARK AVENUE, HOBART, INDIANA 46342

KEY NO.: 45-09-30-426-002.000-018



MULTIFAMILY MORTGAGE,  
ASSIGNMENT OF RENTS  
SECURITY AGREEMENT AND FIXTURE FILING

INDIANA

I affirm under penalty of perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law.

\_\_\_\_\_, Esquire

Prepared by, and after recording return to:

Gould & Ratner LLP  
222 N. LaSalle Street, Suite 800  
Chicago, Illinois 60601  
Attn: Linsey N. Cohen

4822-3875-0234, v. 5

